

1 ALLEN OVERY SHEARMAN STERLING US LLP
 2 Fredric Sosnick (New York Bar No. 2472488) (*admitted pro hac vice*)
 3 Sara Coelho (New York Bar No. 4530267) (*admitted pro hac vice*)
 4 599 Lexington Avenue
 5 New York, New York 10022
 6 Telephone: (212) 848-4000
 7 fsosnick@aoshearman.com
 8 sara.coelho@aoshearman.com

9
 10 McDONALD CARANO LLP
 11 Ryan J. Works (NSBN 9224)
 12 Amanda M. Perach (NSBN 12399)
 13 2300 West Sahara Avenue, Suite 1200
 14 Las Vegas, Nevada 89102
 15 Telephone: (702) 873-4100
 16 rworks@mcdonaldcarano.com
 17 aperach@mcdonaldcarano.com

18 *Proposed Counsel to the Debtors and Debtors in Possession*

19
UNITED STATES BANKRUPTCY COURT
 20
DISTRICT OF NEVADA

21 In re:

- 22 NEVADA COPPER, INC.
 NEVADA COPPER CORP.
 NC DITCH COMPANY LLC
 NC FARMS LLC
 LION IRON CORP.
 0607792 B.C. LTD.

23
 24 Debtors.¹

25 Lead Case No.: 24-50566-hlb
 26 Chapter 11

27 Jointly Administered with:
 28 Case No. 24-50567-hlb
 Case No. 24-50568-hlb
 Case No. 24-50569-hlb
 Case No. 24-50570-hlb
 Case No. 24-50571-hlb

29
Hearing Date: TBD
Hearing Time: TBD

30
DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) (A) APPROVING THE
AUCTION AND BIDDING PROCEDURES, (B) APPROVING STALKING
HORSE BID PROTECTIONS, (C) SCHEDULING CERTAIN DATES AND
DEADLINES WITH RESPECT THERETO AND AN AUCTION,
(D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF,
(E) APPROVING THE FORM APA, AND (II) (A) ESTABLISHING NOTICE
AND PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF
CONTRACTS AND LEASES, (B) AUTHORIZING THE ASSUMPTION AND
ASSIGNMENT OF ASSUMED CONTRACTS, (C) AUTHORIZING
THE SALE OF ASSETS AND (III) GRANTING RELATED RELIEF

31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000
 1001
 1002
 1003
 1004
 1005
 1006
 1007
 1008
 1009
 1010
 1011
 1012
 1013
 1014
 1015
 1016
 1017
 1018
 1019
 1020
 1021
 1022
 1023
 1024
 1025
 1026
 1027
 1028
 1029
 1030
 1031
 1032
 1033
 1034
 1035
 1036
 1037
 1038
 1039
 1040
 1041
 1042
 1043
 1044
 1045
 1046
 1047
 1048
 1049
 1050
 1051
 1052
 1053
 1054
 1055
 1056
 1057
 1058
 1059
 1060
 1061
 1062
 1063
 1064
 1065
 1066
 1067
 1068
 1069
 1070
 1071
 1072
 1073
 1074
 1075
 1076
 1077
 1078
 1079
 1080
 1081
 1082
 1083
 1084
 1085
 1086
 1087
 1088
 1089
 1090
 1091
 1092
 1093
 1094
 1095
 1096
 1097
 1098
 1099
 1100
 1101
 1102
 1103
 1104
 1105
 1106
 1107
 1108
 1109
 1110
 1111
 1112
 1113
 1114
 1115
 1116
 1117
 1118
 1119
 1120
 1121
 1122
 1123
 1124
 1125
 1126
 1127
 1128
 1129
 1130
 1131
 1132
 1133
 1134
 1135
 1136
 1137
 1138
 1139
 1140
 1141
 1142
 1143
 1144
 1145
 1146
 1147
 1148
 1149
 1150
 1151
 1152
 1153
 1154
 1155
 1156
 1157
 1158
 1159
 1160
 1161
 1162
 1163
 1164
 1165
 1166
 1167
 1168
 1169
 1170
 1171
 1172
 1173
 1174
 1175
 1176
 1177
 1178
 1179
 1180
 1181
 1182
 1183
 1184
 1185
 1186
 1187
 1188
 1189
 1190
 1191
 1192
 1193
 1194
 1195
 1196
 1197
 1198
 1199
 1200
 1201
 1202
 1203
 1204
 1205
 1206
 1207
 1208
 1209
 1210
 1211
 1212
 1213
 1214
 1215
 1216
 1217
 1218
 1219
 1220
 1221
 1222
 1223
 1224
 1225
 1226
 1227
 1228
 1229
 1230
 1231
 1232
 1233
 1234
 1235
 1236
 1237
 1238
 1239
 1240
 1241
 1242
 1243
 1244
 1245
 1246
 1247
 1248
 1249
 1250
 1251
 1252
 1253
 1254
 1255
 1256
 1257
 1258
 1259
 1260
 1261
 1262
 1263
 1264
 1265
 1266
 1267
 1268
 1269
 1270
 1271
 1272
 1273
 1274
 1275
 1276
 1277
 1278
 1279
 1280
 1281
 1282
 1283
 1284
 1285
 1286
 1287
 1288
 1289
 1290
 1291
 1292
 1293
 1294
 1295
 1296
 1297
 1298
 1299
 1300
 1301
 1302
 1303
 1304
 1305
 1306
 1307
 1308
 1309
 1310
 1311
 1312
 1313
 1314
 1315
 1316
 1317
 1318
 1319
 1320
 1321
 1322
 1323
 1324
 1325
 1326
 1327
 1328
 1329
 1330
 1331
 1332
 1333
 1334
 1335
 1336
 1337
 1338
 1339
 1340
 1341
 1342
 1343
 1344
 1345
 1346
 1347
 1348
 1349
 1350
 1351
 1352
 1353
 1354
 1355
 1356
 1357
 1358
 1359
 1360
 1361
 1362
 1363
 1364
 1365
 1366
 1367
 1368
 1369
 1370
 1371
 1372
 1373
 1374
 1375
 1376
 1377
 1378
 1379
 1380
 1381
 1382
 1383
 1384
 1385
 1386
 1387
 1388
 1389
 1390
 1391
 1392
 1393
 1394
 1395
 1396
 1397
 1398
 1399
 1400
 1401
 1402
 1403
 1404
 1405
 1406
 1407

Table of Contents

	Page
Relief Requested	1
Jurisdiction and Venue.....	2
Disclosures Under Local Rule 6004	3
Background	3
The Debtors' Sale Process	4
I. The Bidding Procedures.....	8
A. Key Dates and Deadlines for the Sale and Auction.....	14
B. Form and Manner of Sale Notice.....	16
C. Assumption and Assignment Procedures.....	17
D. Provisions Under Local Rule 6004.....	18
Basis for Relief	19
II. Approval of the Bidding Procedures Is in the Best Interests of the Debtors' Estates and Should be Approved.....	19
III. The Bid Protections Have a Sound Business Purpose and Should Be Approved.	21
IV. The Form and Manner of Notice Should Be Approved.....	23
V. Assumption and Assignment Procedures Are Appropriate and Should Be Approved.....	24
VI. The Sale Transaction Should be Approved as an Exercise of Sound Business Judgment.....	25
A. The Debtors Have Demonstrated a Sound Business Justification for the Proposed Sale.....	26
B. Adequate and Reasonable Notice of the Auction and Sale Will Be Provided.....	27
C. The Proposed Sale Process Will Produce a Fair and Reasonable Purchase Price for the Assets.	28
D. The Sale Has Been Proposed In Good Faith Without Collusion and the Successful Bidder Is a "Good-Faith Successful Bidder"	29
E. A Sale Free and Clear of All Liens, Claims, Interests, or Other Encumbrances, to the Fullest Extent Permitted by the Bankruptcy Code, Is Appropriate.	31
VII. Assumption and Assignment of Assigned Contracts Should Be Approved.....	32

1	A.	The Assumption and Assignment Procedures Reflect the Debtors' Reasonable Business Judgment.....	32
2	B.	Defaults Will Be Cured in Connection with the Sale Process.....	33
3	C.	Adequate Assurance of Future Performance Will Be Provided to Counterparties.....	34
4		Reservation of Rights.....	36
5		Request for Waiver of Bankruptcy Rules 6004(h) and 6006(d).....	36
6		Notice	36
7			
8	Exhibit 1	Proposed Order	
9	Exhibit A	Bidding Procedures	
10	Exhibit B	Form of Sale Notice	
11	Exhibit C	Form of Assumption and Assignment Notice	
12	Exhibit D	Form APA	
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Abbotts Dairies of Pa., Inc.</i> , 788 F.2d 143 (3d Cir. 1986).....	26, 30
<i>In re America West Airlines, Inc.</i> , 166 B.R. 908 (Bankr. D. Ariz. 1994).....	22
<i>In the Matter of Andy Frain Services, Inc.</i> , 798 F.2d 1113 (7th Cir. 1986)	30
<i>Bank of Am. Nat 'I Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship</i> , 526 U.S. 434 (1999).....	28
<i>In re Bardos</i> , No. 6:10-BK-41455-SY, 2016 WL 1161225 (B.A.P. 9th Cir. Mar. 23, 2016).....	26
<i>In re Bon Ton Rest. & Pastry Shop, Inc.</i> , 53 B.R. 789 (Bankr. N.D. Ill. 1985)	35
<i>In re Bygaph, Inc.</i> , 56 B.R. 596 (Bankr. S.D.N.Y. 1986).....	35
<i>Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)</i> , 103 B.R. 524 (Bankr. D.N.J. 1988)	35
<i>In re Cash Cloud Inc. dba Coin Cloud</i> , No. 23-10423 (Bankr. D. Nev. Apr. 27, 2023).....	21
<i>In re Catalina Sea Ranch, LLC</i> , No. 2:19-BK-24467-NB, 2020 WL 1900308 (Bankr. C.D. Cal. Apr. 13, 2020)	25, 27
<i>In re Celsius Network LLC</i> , No. 22-10964 (MG), 2022 WL 14193879 (Bankr. S.D.N.Y. Oct. 24, 2022).....	20
<i>Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)</i> , 94 B.R. 343 (E.D. Pa. 1988)	31
<i>In re Claar Cellars LLC</i> , No. 20-00044-WLH11, 2020 WL 1238924 (Bankr. E.D. Wash. Mar. 13, 2020).....	25
<i>In re DeBilio</i> , No. BAP CC-13-1441, 2014 WL 4476585 (B.A.P. 9th Cir. Sept. 11, 2014).....	26
<i>In re Dura Auto. Sys., Inc.</i> , No. 06-11202 (KJC), 2007 WL 7728109 (Bankr. D. Del. Aug. 15, 2007)	20

1	<i>In re Edwards,</i> 228 B.R. 552 (Bankr. E.D. Pa. 1998)	20
2	<i>In re Energy Future Holdings Corp.,</i> 904 F.3d 298 (3d Cir. 2018).....	22
4	<i>In re Food Barn Stores, Inc.,</i> 107 F.3d 558 (8th Cir. 1997)	26
6	<i>In re Golden Empire Air Rescue, Inc.,</i> No. BAP EC-07-1086, 2007 WL 7540946 (B.A.P. 9th Cir. Oct. 25, 2007)	20, 26, 29
7	<i>Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.,</i> 318 U.S. 523 (1943).....	32
9	<i>In re Hupp Indus., Inc.,</i> 140 B.R. 191 (Bankr. N.D. Ohio 1992).....	23
11	<i>In re Integrated Res., Inc.,</i> 147 B.R. 650 (S.D.N.Y. 1992).....	22, 26
12	<i>In re Kellstrom Indus., Inc.,</i> 282 B.R. 787 (Bankr. D. Del. 2002)	31
14	<i>In re Las Vegas Monorail Company,</i> Case No. 20-14451 (NMC) (Bankr. D. Nev. Sept. 30, 2020), ECF No. 98	21
16	<i>In re Lionel Corp.,</i> 722 F.2d 1063 (2d Cir.1983).....	23, 25, 26
17	<i>In re Luce Indus., Inc.,</i> 8 B.R. 100 (Bankr. S.D.N.Y. 1980).....	34
19	<i>In re Metal Partners Rebar, LLC, et al.,</i> Case No. 20-12878 (ABL) (Bankr. D. Nev. Aug 11, 2020)	21
20	<i>In re Natco Indus., Inc.,</i> 54 B.R. 436 (Bankr. S.D.N.Y. 1985).....	35
22	<i>In re O'Brien Env't Energy, Inc.,</i> 181 F.3d 527 (3d Cir. 1999).....	22, 23
24	<i>Off. Comm. of Unsecured Creditors v. Interforum Holding LLC,</i> No. 11-CV-219, 2011 WL 2671254, No. 11- 219 (E.D. Wis. July 7, 2011).....	22
25	<i>Pelican Homestead v. Wooten (In re Gabel),</i> 61 B.R. 661 (Bankr. W.D. La. 1985).....	24

1	<i>In re Penn Traffic Co.</i> , 524 F.3d 373 (2d Cir. 2008).....	33
2	<i>In re Pomona Valley Med. Grp., Inc.</i> , 476 F.3d 665 (9th Cir. 2007)	32
4	<i>In re Realia, Inc.</i> , 2012 Bankr. LEXIS 1083, 2012 WL 833372 (9th Cir. BAP), <i>aff'd</i> , 2014 U.S. App. LEXIS 7138, 2014 WL 1466227 (9th Cir.)	31
6	<i>In re Red Rose, Inc.</i> , Case No. 20-12814 (MKN) (Bankr. D. Nev. Nov. 6, 2020), ECF No. 1281	21
8	<i>In re Reliant Energy Channelview LP</i> , 594 F.3d 200 (3d Cir. 2010).....	22
9		
10	<i>In re S.N.A. Nut Co.</i> , 186 B.R. 98 (Bankr. N.D. Ill. 1995)	22
11	<i>In re Sasson Jeans, Inc.</i> , 90 B.R. 608 (S.D.N.Y. 1988).....	30
12		
13	<i>Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.</i> , 872 F.2d 36 (3d Cir. 1989).....	32
14		
15	<i>In re Shary</i> , 152 B.R. 724 (Bankr. N.D. Ohio 1993).....	24
16	<i>Silverman as Tr. of Stanley C. Silverman Revocable Tr. , dated Aug. 26, 2006 v. Birdsell</i> , 796 F. App'x 935 (9th Cir. 2020).....	21
17		
18	<i>Simantob v. Claims Prosecutor, LLC (In re Lahijani)</i> , 325 B.R. 282 (9th Cir. BAP 2005).....	21, 25, 28
19		
20	<i>In re Slates</i> , No. BAP EC-12-1168-KIDJU, 2012 WL 5359489 (B.A.P. 9th Cir. Oct. 31, 2012)	26
21		
22	<i>In re Station Casinos, Inc.</i> , No. 09-52477-GWZ, 2009 WL 8519660 (Bankr. D. Nev. July 28, 2009)	33
23		
24	<i>In re Tabone, Inc.</i> , 175 B.R. 855 (Bankr. D.N.J. 1994)	24
25		
26	<i>In re Thomas</i> , 287 B.R. 782 (B.A.P. 9th Cir. 2002).....	26
27		
28	<i>In re Trans World Airlines, Inc.</i> , No. 01-00056, 2001 WL 1820326 (Bankr. D. Del. 2001)	28, 29

1 *In re Walter,*
1 83 B.R. 14 (B.A.P. 9th Cir. 1988).....25

2 *In re Wilde Horse Enterprises, Inc.,*
2 136 B.R. 830 (Bankr. C.D. Cal. 1991).....26

4 *In re X10 Wireless Tech., Inc.,*
4 No. BAP WW-04-1328-PST, 2005 WL 6960205 (B.A.P. 9th Cir. Apr. 5, 2005) ..32

5 **Statutes**

7 11 U.S.C. § 105(a)19, 25

8 11 U.S.C. § 332.....19

9 11 U.S.C. § 363(b).....*passim*

10 11 U.S.C. § 365(f)(2)(B).....*passim*

11 28 U.S.C. §§ 157 and 1334.....2

12 28 U.S.C. §§ 1408 and 1409.....2

13 **Other Authorities**

14 Fed. R. Bankr. P. 6004(h)36

15 Fed. R. Bankr. P. 6006(d)36

Nevada Copper, Inc., and its affiliates that are debtors and debtors in possession (collectively, the “*Debtors*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”), respectfully represent in support of this motion (the “*Motion*”) as follows:

Relief Requested

1. The Debtors request entry of an order, substantially in the form attached hereto as **Exhibit 1** (the “***Bidding Procedures Order***”), among other things: (i) approving the proposed marketing, auction, and bidding procedures attached as **Exhibit A** to the Order (the “***Bidding Procedures***”), by which the Debtors will solicit and select the highest or otherwise best offer(s) for a sale or disposition of all or substantially all of the Debtors’ assets (the “***Assets***”) or any portion thereof (collectively, the “***Sale***,” and each such sale transaction, a “***Sale Transaction***”); (ii) establishing certain dates and deadlines related thereto and scheduling an auction or auctions, if any, for the Sale (the “***Auction***”); (iii) approving the manner of notice of the Auction and sale hearing (the “***Sale Hearing***”) as may be necessary; (iv) approving a form of asset purchase agreement, substantially in the form attached to the Proposed Order as **Exhibit D** (the “***Form APA***”);² (v) approving procedures for the assumption and assignment of certain executory Contracts (as defined below) and unexpired Leases (as defined below) in connection with the Sale, if any; (vi) approving the break-up fee and expense reimbursements relating to potential stalking horse bidders if the Debtors determine to enter into such an arrangement with a bidder for the Assets (the “***Stalking Horse Bid Protections***”); and (vii) granting related relief.

2. Additionally, the Debtors will seek entry of one or more orders at the Sale Hearing (the “*Sale Order*”) (i) authorizing and approving the Sale with the Successful Bidder on the terms substantially set forth in the Successful Bid; (ii) authorizing and approving the sale of the Debtors’ Assets free and clear of liens, claims, encumbrances, and other interests to the extent set forth in an asset purchase agreement with a Successful Bidder; (iii) authorizing the assumption and

² Prior to the hearing to consider the Bidding Procedures Order, the Debtors will file a supplement to this Motion on the docket of these Chapter 11 Cases containing the Form APA.

assignment of executory contracts and leases as set forth in an asset purchase agreement with a Successful Bidder; and (iv) granting any related relief.

3. In support of this Motion, the Debtors rely upon the *Omnibus Declaration of Gregory J. Martin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [ECF No. 4] (the “**First Day Declaration**”),³ filed on June 10, 2024, and the *Declaration of Zul Jamal in Support of the Debtors' Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures; (B) Approving Stalking Horse Bid Protections; (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction; (D) Approving the Form and Manner of Notice Thereof; (E) Approving the Form APA; and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases; (B) Authorizing the Assumption and Assignment of Assumed Contracts; (C) Authorizing the Sale of Assets; and (III) Granting Related Relief* (the “**Sale Declaration**”), which was filed contemporaneously with this Motion. The First Day Declaration and the Sale Declaration are incorporated herein by reference.

MEMORANDUM OF POINTS AND AUTHORITIES

Jurisdiction and Venue

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “***Bankruptcy Code***”), Rules 2002, 6004, 6006, 9007, and 9008 of the Federal Rules of Bankruptcy Procedure (the “***Bankruptcy Rules***”), and Rules 6004 and 3017 of the *Local Rules of Bankruptcy Practice for the United States Bankruptcy Court of the District of Nevada* (the “***Local Rules***”).

5. Pursuant to Local Rule 9014.2, the Debtors consent to the Court's entry of a final order in connection with this Motion to the extent that it is later determined that, absent consent of

³ Capitalized terms not otherwise defined herein shall have the meaning set forth in the First Day Declaration.

1 the parties, the Court cannot enter final orders or judgments consistent with Article III of the United
 2 States Constitution.

3 **Disclosures Under Local Rule 6004**

4 6. Local Rule 6004 requires, among other things, that a debtor include the “material
 5 terms” of a proposed sale in any sale motion. As set forth above, the Debtors and their
 6 professionals have begun a comprehensive marketing of the Debtors’ assets. Nevertheless, the
 7 Debtors do not, as yet, have an actionable offer in hand. Moreover, because the Debtors continue
 8 to have discussions with parties in interest, they cannot, as yet, identify with any reasonable
 9 specificity the terms of the Sale of the Assets. Accordingly, the Debtors are unable at this time to
 10 make the disclosures required under Local Rule 6004. In the event the Debtors secure one or more
 11 stalking horse bidders (each, a “***Stalking Horse Bidder***”), the Debtors will file such Stalking Horse
 12 Bidder’s purchase agreement and make the requisite disclosures.

13 **Background**

14 7. On June 10, 2024 (the “***Petition Date***”), each of the Debtors filed voluntary
 15 petitions for relief under chapter 11 of the Bankruptcy Code with the Court. On June 18, 2024,
 16 the Court entered orders authorizing the joint administration of these Chapter 11 Cases for
 17 procedural purposes only, pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate
 18 their businesses and manage their properties as debtors in possession pursuant to sections 1107(a)
 19 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has
 20 been made in these Chapter 11 Cases, and no official committees have been appointed or
 21 designated.

22 8. The Debtors have been in the business of mining copper, and other minerals, and
 23 operating a processing plant that refines copper ore into copper concentrate, with the bulk of the
 24 Debtors’ operations focused on their Pumpkin Hollow project (the “***Project***”), which is located
 25 outside of Yerington, Nevada. The Project, which contains substantial mineral reserves and
 26 resources, including not only copper, but gold, silver, and iron magnetite, consists of an
 27 underground mine and processing facility, together with an open-pit project that is in the pre-

feasibility stage of development. The Debtors, in the period leading up to the commencement of the Chapter 11 Cases, operated under significant liquidity constraints. In an effort to conserve liquidity, the Debtors have suspended mining operations and the operation of their processing plant, as they pursue a sale of substantially all of their assets.

9. Additional facts relating to the Debtors' business and capital structure, and the commencement of these Chapter 11 Cases, are set forth in the First Day Declaration.

The Debtors' Sale Process

10. As described in the First Day Declaration, the Debtors commenced these Chapter
11 Cases several months after commencing a process to sell their businesses. The Debtors believe
that, building on the Prepetition Sale Efforts, pursuing an expedited and compressed process for
the sale of substantially all of their assets in these Chapter 11 Cases (the “**Sale Process**”) will
maximize the value of their estates and preserve as many jobs as possible.

11. In connection with their prepetition sale efforts, in October 2023, the Debtors engaged Citigroup Global Markets Inc. (the “**Prepetition Investment Banker**”) as their investment banker and began to market their businesses. As part of their prepetition sale efforts, the Debtors and the Prepetition Investment Banker contacted over 30 parties, and ultimately received four proposals from potential purchasers interested in acquiring substantially all or a portion of the Debtors’ business. After considering the proposals they received, the Debtors entered into two separate exclusivity agreements with the prospective purchasers regarding a proposal for additional financing or a potential sale of the Debtors’ business. Ultimately, however, the Debtors could not agree to terms with either of those prospective purchasers in a manner that would have allowed the Debtors to consummate a sale on a timeline that would have addressed their urgent funding needs. In the absence of a sale agreement on a viable timeline, and facing diminishing financial support from their lenders, the Debtors determined it was necessary to file these Chapter 11 Cases in order to obtain additional time to continue pursuing a sale process under the protections provided by the Bankruptcy Code. First Day Declaration ¶ 49.

1 12. To fund a continued and updated process for the sale of their assets in chapter 11
 2 (the “*Sale Process*”) and the administration of the Chapter 11 Cases, the Debtors negotiated a
 3 senior secured \$60 million postpetition financing facility (the “*DIP Facility*”), with two affiliates
 4 of Elliott Investment Management L.P. (together, the “*DIP Lenders*”). The DIP Facility contains
 5 certain milestones (the “*DIP Milestones*”), several of which relate to the timeline for the Debtors
 6 to effectuate the Sale, including: (i) obtaining the entry of the Bidding Procedures Order not later
 7 than 45 days after the Petition Date (*i.e.*, July 25, 2024); (ii) obtaining the entry of a final Sale
 8 Order not later than 108 days after the Petition Date (*i.e.*, September 26, 2024); and (iii)
 9 consummating the sale of their Assets not later than 120 days after the Petition Date (*i.e.*, October
 10 8, 2024).⁴

11 13. Following the commencement of these Chapter 11 Cases, the Debtors, with the
 12 assistance of their proposed investment banker, Moelis & Company LLC (“*Moelis*”), launched a
 13 robust, but accelerated, third-party marketing process (the “*Marketing Process*”) to solicit
 14 proposals for the sale of all or substantially all of the Debtors’ Assets. Beginning prior to the
 15 Petition Date, in preparation for outreach as part of the Marketing Process, the Debtors, with
 16 Moelis’ assistance, prepared a confidential information memorandum with extensive information
 17 on the Assets and populated a virtual data room containing significant diligence materials. To
 18 date, Moelis, on behalf of the Debtors, conducted initial outreach to at least 78 potential strategic
 19 and financial investors through introductory emails and calls. Sale Declaration ¶ 7. The Debtors’
 20 management, Moelis, and the Debtors’ other advisors are holding numerous discussions with
 21 parties under confidentiality agreements (“*Confidentiality Agreements*”) and responded to
 22 information requests as part of the diligence process to provide potential investors with information
 23 necessary to submit an indication of interest.

24 14. The proposed Sale Process outlined in this Motion is the product of thoughtful
 25 discussion and planning by the Debtors. Pursuant to this Motion, the Debtors seek to formalize

27 ⁴ The DIP Milestones also required the filing of this Motion not later than 10 days after the Petition Date.
 28

1 bidding procedures designed to maximize value for all stakeholders and minimize disruptions to
2 the Debtors' restructuring efforts. The Bidding Procedures attached to the Bidding Procedures
3 Order as Exhibit A provide the Debtors with significant flexibility, while providing adequate time
4 for the Debtors to market the Assets, receive and evaluate bids, execute a Stalking Horse APA (as
5 defined in the Bidding Procedures) in their discretion, if applicable, and hold the Auction, as
6 necessary, to determine the highest or otherwise best bid for the Assets.

7 15. As described in the Sale Declaration, the Bidding Procedures were designed to
8 generate the greatest level of interest and best value for the Assets while affording the Debtors
9 flexibility to execute an asset sale as quickly and efficiently as possible, within the timeline
10 imposed by the DIP Milestones. The Debtors are confident the Bidding Procedures and other
11 relief requested herein will facilitate the sale of the Assets for the highest or otherwise best value,
12 preserve as many jobs as possible for the Debtors' employees, and maximize recoveries for their
13 stakeholders.

14 16. Despite the relatively short timetable from commencement to the proposed
15 conclusion of the Sale Process that is contemplated by the DIP Milestones, the Debtors believe
16 that a sale can be completed successfully within that timeframe, due in part, to the fact that they
17 already are several months into a sale process. In that regard, they already have a virtual data room
18 (the "**Data Room**") up and running prior to the Petition Date that they can make available to
19 potential bidder that sign non-disclosure agreements with the Debtors, which gives them a running
20 start on the Sale Process.

21 17. By this Motion, the Debtors seek approval of the Bidding Procedures to establish
22 an open and competitive process for the solicitation, receipt, and evaluation of bids in a fair,
23 accessible, and expeditious manner. The Bidding Procedures contemplate that all parties that
24 execute Confidentiality Agreements in accordance with the Bidding Procedures will have access
25 to the Data Room throughout the Sale Process. The Bidding Procedures provide for access to due
26 diligence, the criteria for qualifying bidders and bids, the process for receiving and negotiating
27 offers, the conduct of an auction (if any), the selection and approval of successful bidders, and
28

1 deadlines pertaining to the Bidding Procedures. If approved, these procedures will enable the
2 Debtors to obtain bids from potential buyers in a manner that aligns with the Milestones and the
3 Debtors' chapter 11 strategy.

4 18. The timeline set forth in the Bidding Procedures was calculated to balance the need
5 to provide adequate notice to parties in interest and any person or entity interested in purchasing
6 the Assets (a "**Potential Bidder**") with the need to run an expeditious and efficient sale process or
7 processes. The Bidding Procedures are designed to generate the highest or otherwise best available
8 recoveries to the Debtors' stakeholders by encouraging prospective bidders to submit competitive,
9 value-maximizing bids. Sale Declaration ¶ 12. The Debtors believe that the Bidding Procedures
10 and the timeline set forth therein are in the best interests of the Debtors' estates, will establish the
11 extent of the market for the Debtors' Assets, and provide interested parties with sufficient
12 opportunity to participate. *Id.*

13 19. Through the Sale Process, the Debtors are seeking to sell all of their assets as a
14 going concern pursuant to the terms of the Form APA. These assets include, but are not limited
15 to, the Debtors' going-concern business, real property, unexpired leases, executory contracts,
16 equipment, inventory, supplies, intellectual property, insurance proceeds, prepaid expenses and
17 deposits, and books and records (collectively, the "**Assets**"), in each case, free and clear of all liens,
18 claims, interests, or other encumbrances to the fullest extent permitted by the Bankruptcy Code.
19 The Debtors will consider bids that are made for all or substantially all of the Assets. In addition,
20 the Debtors will consider bids for less than substantially all of the Assets, however, the value of
21 such bids will be evaluated against the Debtors intention to sell all of their Assets, and the value
22 and complexity of the sale of any Assets not included in a bid. The Debtors will also consider bids
23 that take the form of a sale of stock of one or more subsidiaries.

24 20. Importantly, the Bidding Procedures recognize the Debtors' fiduciary obligations
25 to maximize value and, as such, do not impair the Debtors' ability to consider all Qualified Bid
26 proposals. The Bidding Procedures, therefore, preserve the Debtors right to modify the Bidding
27 Procedures in accordance with its terms as necessary or appropriate to maximize value for their
28

1 estates, after consultation with: (i) any official committee of unsecured creditors appointed in
 2 these cases and certain other Consultation Parties; and (ii) the DIP Lenders, except to the extent
 3 any such DIP Lender (or an affiliate of a DIP Lender) has indicated an interest in submitting, or
 4 has submitted, a Bid (collectively, the “***Consultation Parties***”).

5 I. The Bidding Procedures

6 21. The Bidding Procedures, which are attached as **Exhibit A** to the Bidding
 7 Procedures Order, are not restated herein in their entirety. Certain key terms of the Bidding
 8 Procedures, however, are summarized below:⁵

- 9 i. **Bid Deadline:** An Acceptable Bidder that desires to make a bid on one or more of
 10 the Assets shall deliver Binding Bids to the Bid Notice Parties no later than
 11 **September 6, 2024, at 12:00 p.m. (prevailing Pacific Time)** (the “***Bid
 12 Deadline***”); provided that the Debtors may, in consultation with the Consultation
 13 Parties, extend the Bid Deadline for any reason whatsoever, in their reasonable
 business judgment, for all or certain Potential Bidders, without further order of the
 Court, subject to providing notice to all Potential Bidders and the Consultation
 Parties.
- 14 ii. **Public Announcement of Auction:** No later than **July 29, 2024**, or as soon as
 15 reasonably practicable after entry of the Bidding Procedures Order, the Debtors
 16 shall publish the Sale Notice, with any modifications necessary for ease of
 publication, on one occasion in *The Wall Street Journal (National Edition)*, to
 provide notice to any other potential interested parties, and (post the Sale Notice on
 their case website, <https://dm.epiq11.com/case/nevadacopper>.
- 17 iii. **Potential Bidder Qualifications:** To participate in the bidding process or otherwise
 18 be considered for any purpose hereunder, including to receive access to due
 19 diligence materials, a person or entity interested in purchasing the Assets or part of
 20 the Assets (a “***Potential Bidder***”) must deliver or have previously delivered to the
 Debtors the following preliminary documentation (collectively, the “***Preliminary
 21 Bid Documents***”):
 - 22 a. an executed confidentiality agreement (a “***Confidentiality Agreement***”) in
 form and substance acceptable to the Debtors;
 - 23 b. sufficient information that the Potential Bidder has or can reasonably obtain
 the financial capacity to close a purchase of any portion, all, or substantially
 all of the Debtors’ Assets, the adequacy of which must be acceptable to the
 Debtors, in consultation with the Consultation Parties;

25 ⁵ This summary description and any further descriptions in this Motion of the provisions of the Bidding Procedures
 26 are for summary purposes only, do not restate the terms of the Bidding Procedures in their entirety, and in the
 27 event of any inconsistency with the Bidding Procedures, the Bidding Procedures will govern. Capitalized terms
 used but not defined in this section shall have the meanings ascribed to them in the Bidding Procedures.

- c. a statement indicating whether the Potential Bidder is requesting consent from the Debtors to partner with or otherwise work with any other interested party in connection with the potential submission of a joint Bid, the identity and domicile of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable, which the Debtors may approve in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis; and
 - d. any other information required (as determined by the Debtors in consultation with the Consultation Parties) to allow the Debtors, in consultation with the Consultation Parties, to determine that the Potential Bidder intends to receive due diligence information solely for purposes consistent with these Bidding Procedures.

iv. **Qualified Bid Requirements:** To participate in the Auction, an Acceptable Bidder must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the Assets (each, a “***Bid***”), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

 - a. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state the following: (a) the particular Assets, or the portion thereof identified with reasonable specificity, to be purchased and (b) the liabilities and obligations to be assumed, including any debt and cure costs to be assumed;
 - b. **Good Faith Deposit:** Except with respect to any Credit Bid, the Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “***Good Faith Deposit***”) on terms acceptable to the Debtors in consultation with the Consultation Parties. To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals 10% of the increased aggregate purchase price promptly and in no event later than one business day following the conclusion of the Auction;
 - c. **Purchase Price:** Each Bid must (a) clearly set forth the purchase price to be paid, assuming a purchase of the applicable Assets and any assumption of liabilities (the “***Purchase Price***”), (b) identify separately the cash and non-cash components of the Purchase Price, and (c) indicate the allocation of the Purchase Price among the applicable Assets; *provided* that, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation. The Purchase Price should be a single point value in U.S. Dollars for the applicable Assets on a cash-free, debt-free basis. Any Bid for substantially all of the Assets must also include a statement as to whether the Bid is conditioned on purchasing all Assets or whether the Qualified Bid should be viewed as a separate Bid for one or more sets of Assets. The Debtors will consider the value to the estate as a whole when evaluating bids for only certain of the Assets. The Debtors reserve the right, in consultation with the Consultation Parties, to ask any Acceptable Bidder to allocate the value ascribed to their Bid for any particular Asset and to inquire about any significant assumption on which such valuations are based;

- d. **Same or Better Terms; Bid Documents:** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “**Bid Documents**”). The Bid Documents shall include: (a) the form of purchase agreement on which the Acceptable Bidder is prepared to transact, together with a redline of such agreement marked against the Form APA, (b) a schedule of contracts and leases to be assumed to the extent applicable to the Bid, (c) any other material documents integral to such Bid, and (d) a statement from the Acceptable Bidder that (1) it is prepared to enter into and consummate the transactions contemplated in the form purchase agreement, no later than ten days after the conclusion of the Auction, (or, if no Auction is held, the Bid Deadline (as defined below)), or if a later date is required, the reasons that such a later date is required; and (2) that the Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the “**Back-Up Bid**”)) until the consummation of the Sale Transaction;
 - e. **No Qualified Bidder Bid Protections:** Each Bid, other than a Bid that has been designated as a Stalking Horse Bid (as defined herein), must include a statement that the Bid does not entitle such bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the applicable Assets;
 - f. **Employee Obligations:** Each Bid must indicate whether the Acceptable Bidder intends to hire all employees of the Debtor (or if applicable, all employees that are primarily employed in connection with the applicable Assets included in such Bid). If the Acceptable Bidder does not intend to hire all employees, the Acceptable Bidder must include a description of the Acceptable Bidder’s intentions with respect to any employee that is not to be hired under the terms of the Bid;
 - g. **Sources of Financing:** To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Acceptable Bidder has received sufficient debt and equity funding commitments to satisfy the Acceptable Bidder’s obligations under the proposed Sale Transaction and other obligations under its Bid, including providing adequate assurance of future performance under all Contracts proposed to be assumed by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
 - h. **Contingencies; No Financing or Diligence Outs:** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline;

- 1 i. **Identity:** Each Bid must fully disclose the identity and domicile of each
2 entity and each entity's shareholders, partners, investors, and ultimate
3 controlling entities that will be bidding for or purchasing the applicable
4 Assets or otherwise participating in connection with such Bid, and the
5 complete terms of any such participation, along with sufficient evidence
6 that the Acceptable Bidder is legally empowered to complete the
7 transactions on the terms contemplated by the parties. Each Bid must also
8 include contact information for the specific person(s) whom Moelis and
9 A&O Shearman should contact regarding such Bid;
- 10 j. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and
11 representation that the Acceptable Bidder: (a) has had an opportunity to
12 conduct any and all due diligence prior to making its offer; (b) has relied
13 solely upon its own independent review, investigation, and inspection of
14 any documents and the assets in making its Bid; and (c) did not rely upon
15 any written or oral statements, representations, promises, warranties, or
16 guaranties whatsoever, whether express, implied, by operation of law, or
17 otherwise, regarding the completeness of any information provided in
18 connection therewith, except as expressly stated in the Acceptable Bidder's
19 proposed purchase agreement;
- 20 k. **Authorization:** Each Bid must contain evidence that the Acceptable Bidder
21 has obtained all necessary authorizations or approvals from its shareholders
22 or its board of managers or directors, or any other internal and other
23 approvals, as applicable, with respect to the submission of its Bid and the
24 consummation of the transactions contemplated in such Bid;
- 25 l. **Joint Bids:** The Debtors will be authorized to approve joint Bids in their
26 reasonable business judgment, in consultation with the Consultation Parties,
27 on a case-by-case basis, provided that a joint bid meets the Qualified Bid
28 Requirements and the applicable bidders otherwise comply with these
Bidding Procedures;
- 1 m. **Adequate Assurance of Future Performance:** Each Bid must (a) identify
2 any executory contracts (the "*Executory Contracts*") and any unexpired
3 leases (the "*Unexpired Leases*") to be assumed or assumed and assigned in
4 connection with the proposed Sale Transaction, (b) provide for the payment
5 of all cure amounts (the "*Cure Amounts*") related to such Executory
6 Contracts and Unexpired Leases by the Acceptable Bidder, (c) demonstrate,
7 in the Debtors' reasonable business judgment, in consultation with the
8 Consultation Parties (as defined herein), that the Acceptable Bidder can
9 provide adequate assurance of future performance under all such Executory
10 Contracts and Unexpired Leases sufficient to satisfy the requirements of
11 sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code, and
12 (d) provide the following documentation: (1) the legal name of the
13 proposed assignee of Unexpired Leases (the "*Proposed Assignee*") and any
14 guarantors, as applicable; and (2) financial statements for the calendar years
15 ended 2022 and 2023 for the Proposed Assignee and any guarantors, as
16 applicable, and other financial information about the Proposed Assignee to
17 demonstrate its ability to provide adequate assurance of future performance;
- 18 n. **Acknowledgement of Compliance with Bidding Procedures, Bidding
19 Order, Bankruptcy Code, and Non-Bankruptcy Law:** Each Bid must
20 acknowledge its compliance in all respects with these Bidding Procedures,

1 the Bidding Procedures Order, Bankruptcy Code and any applicable non-
 2 bankruptcy law;

- 3 o. **No Collusion:** The Acceptable Bidder must acknowledge in writing (a) that
 4 it has not engaged in any collusion with respect to any Bids or the Sale
 5 Transaction, specifying that it did not agree with any Acceptable Bidders or
 6 Potential Bidders to control price; and (b) agree not to engage in any
 7 collusion with respect to any Bids, the Auction, or the Sale Transaction. For
 8 the avoidance of doubt, this requirement does not restrict Potential
 9 Bidder(s) from working with other Potential Bidder(s) with the Debtors'
 10 prior written consent (email shall suffice) following the Debtors'
 11 consultation with the Consultation Parties;
- 12 p. **Good Faith Offer:** The Bid must constitute a good faith, *bona fide* offer to
 13 consummate the Sale Transaction;
- 14 q. **Irrevocable:** Each Bid must state that in the event such Bid is chosen as
 15 the Back-Up Bid (as defined below), it shall remain irrevocable until the
 16 Debtors and the Successful Bidder consummate the applicable Sale
 17 Transaction;
- 18 r. **Back-Up Bid:** Each Bid shall provide that the Acceptable Bidder will serve
 19 as a Back-Up Bidder (as defined below) if Bid is the next highest or
 20 otherwise best bid;
- 21 s. **Regulatory Approvals and Covenants:** A Bid must set forth each
 22 regulatory and third-party approval required for the Acceptable Bidder to
 23 consummate the Sale Transaction, if any, and the time period within which
 24 the Acceptable Bidder expects to receive such regulatory and third-party
 25 approvals (and in the case that receipt of any such regulatory or third-party
 26 approval would not be expected in time to allow a the closing of the Sale
 27 Transaction to occur by October 8, 2024, those actions the Acceptable
 28 Bidder will take to ensure receipt of such approvals as promptly as
 possible);
- 29 t. **Time Frame for Closing:** A Bid by an Acceptable Bidder must be
 30 reasonably likely (based on antitrust or other regulatory issues, experience,
 31 and other considerations) to be consummated, if selected as the Successful
 32 Bid (as defined herein), within a time frame for the Closing set forth above,
 33 or on such timeframe as may be acceptable to the Debtors, in consultation
 34 with the Consultation Parties; *provided*, that if the Acceptable Bidder
 35 expects to be unable to close on its Bid on or before October 7, 2024, its
 36 Bid should indicate the date on which it expects to be able to close;
- 37 u. **No Fees:** Each Acceptable Bidder presenting a Bid or Bids will bear its
 38 own costs and expenses (including legal fees) in connection with the
 39 proposed transaction, and by submitting its Bid, the Acceptable Bidder is
 40 agreeing to disclaim any right to receive a fee analogous to a break-up fee,
 41 expense reimbursement, termination fee, or other similar form of
 42 compensation; and that, for the avoidance of doubt, each Acceptable Bidder
 43 by submitting its Bid is agreeing to refrain from and waive any assertion or
 44 request for reimbursement on any basis, including under section 503(b) of
 45 the Bankruptcy Code; *provided* that the Debtors are authorized in their
 46 reasonable business judgment, in consultation with the Consultation Parties,

1 to provide the Stalking Horse Bid Protections (as defined below) to one or
 2 more stalking horse bidders (each, a “***Stalking Horse Bidder***”) in
 3 accordance with these Bidding Procedures;

4 v. **Adherence to Bidding Procedures:** By submitting its Bid, each
 5 Acceptable Bidder is agreeing to abide by and honor the terms of these
 6 Bidding Procedures and agrees not to submit a Bid or seek to reopen the
 7 Auction after conclusion of the Auction;

8 w. **Consent to Jurisdiction:** The Acceptable Bidder must submit to the
 9 jurisdiction of the Court and waive any right to a jury trial in connection
 10 with any disputes relating to the Debtors’ qualification of Bids, to the
 11 Auction, the Sale, the Sale Transaction and the construction and
 12 enforcement of these Bidding Procedures, any written indications of
 13 interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any
 14 and all other agreements entered into in connection with any proposed Sale
 15 Transaction, and the Closing, as applicable; and

16 x. **Conditions to Closing:** Each Bid must identify with particularity each and
 17 every condition to closing, including the Executory Contracts and
 18 Unexpired Leases for which assumption and assignment is required.

19 v. **Auction:** Other than as expressly set forth herein, if the Debtors receive more than
 20 one Qualified Bid for the Assets (or, if applicable, any portion of Assets) by the Bid
 21 Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder
 22 in their reasonable business judgment, in consultation with the Consultation Parties,
 23 with respect to such Assets or portion of Assets. If the Debtors do not receive a
 24 Qualified Bid for any particular Asset by the Bid Deadline, the Debtors will not
 25 conduct the Auction with respect to such Asset. If one or more Qualified Bids
 26 (other than the Stalking Horse Bid, if any) are received by the Bid Deadline with
 27 respect to the applicable Assets, then the Debtors shall conduct the Auction with
 28 respect to such Assets in accordance with the Auction Procedures (as defined
 below) and shall consult with the Consultation Parties throughout the Auction
 process (to the extent such Consultation Parties have not submitted a Qualified
 Bid).

The Auction shall commence on **September 10, 2024 at 12:00 p.m. (prevailing Eastern Time)**, at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

vi. **Stalking Horse Bid Protections:** At any time until 20 days prior to the Bid Deadline, the Debtors shall be authorized, but not obligated, in an exercise of their reasonable business judgment, (a) in consultation with the Consultation Parties and (b) with the consent of the DIP Lenders, to (1) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction for such assets, and (2) in connection with any stalking horse agreement with a Stalking Horse Bidder and subject in all respects to approval of the Court, (x) provide a break-up fee and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses the (“***Stalking Horse Bid Protections***”) in an aggregate amount of break-up fee and reimbursement of expenses not to exceed three percent of the Purchase Price; *provided, however,* that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted, a Bid for any Assets, it shall not have consent rights with respect

1 to the selection of the Stalking Horse Bidder or any protections to be afforded to
 2 such Stalking Horse Bidder.

3 A. ***Key Dates and Deadlines for the Sale and Auction***

4 22. The Debtors are seeking approval of the Bidding Procedures and the following
 5 proposed timeline for the sale process (the dates set forth below, respectively, the “*Sale Schedule*”)
 6 to establish a clear and open process for the solicitation, receipt, and evaluation of third-party bids
 7 on a timeline that allows the Debtors to consummate a Sale Transaction. Moreover, the Debtors,
 8 in their sound business judgment, reserve the right to alter the timing of the Sale Schedule as
 9 necessary under the circumstances, or to conduct multiple Sale Transactions across one or more
 10 Auctions in order to maximize the value of the estates, in each case in accordance with the Bidding
 Procedures.

11 23. The Debtors’ need to consummate a sale of their Assets as quickly and efficiently
 12 as possible. The Sale Schedule set forth in the Bidding Procedures and below was calculated to
 13 balance the need to provide Potential Bidders with adequate opportunity to conduct the necessary
 14 diligence and the need to run an expeditious and efficient Sale Process in accordance with the DIP
 15 Milestones. Sale Declaration ¶¶ 12-14. Accordingly, the Debtors propose the following key dates
 16 for the sale process:

Date	Deadline
Monday, July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order	Service of Sale Notice; Publication of Sale Notice
Tuesday, July 30, 2024, or as soon as reasonably practicable thereafter	Serve notice of potential assumption and assignment (the “ <i>Assumption and Assignment Notice</i> ”) to contract counterparties
Tuesday, August 20, 2024 (or 21 days after service of an applicable notice of assumption and assignment)	Deadline to object to proposed cure amounts and assumption and assignment (the “ <i>Assumption and Cure Objection Deadline</i> ”)
Friday, September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)	Bid Deadline

Monday, September 9, 2024, at 9:00 a.m. (prevailing Pacific Time)	Qualified Bid Designation Date
Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
Thursday September 12, 2024	Serve Notice of Successful Bidder on Contract Counterparties
Friday, September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)	Deadline to object to the proposed Sale (“ <i>Sale Objection Deadline</i> ”); deadline to object to adequate assurance (“ <i>Adequate Assurance Objection Deadline</i> ”).
Tuesday, September 24, 2024, at 12:00 p.m. (prevailing Pacific Time)	Deadline for responses to objections.
Wednesday, September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)⁶	Sale Hearing
Thursday, September 26, 2024	Entry of Sale Order
On or before Monday, October 8, 2024	Closing

24. The Debtors respectfully request that the Court approve this timeline, which the Debtors believe appropriate under the circumstances. The timeline contemplated by the Bidding Procedures, while expeditious, is consistent with the milestones in the DIP Milestones and otherwise is reasonable under the circumstances. Sale Declaration ¶ 12-14. It is vitally important that the Debtors be afforded the opportunity to proceed with an efficient sale process within the DIP Milestones to preserve value for all stakeholders. Sale Declaration ¶ 8.

25. As described above, there already has been a thorough and extensive marketing process for the Debtors. Many of the potential buyers most likely to make Qualified Bids on the Assets have already engaged with the Debtors, completed extensive diligence, had the opportunity

⁶ Subject to the availability and convenience of the Court.

1 to make proposals prepetition, and are aware of the Debtors' situation. In addition, potential
 2 bidders who have not previously conducted diligence on the Debtors' businesses will have
 3 immediate access to, subject to the execution of an appropriate Confidentiality Agreement, a
 4 significant amount of information regarding the Assets, including, but not limited to, a confidential
 5 information memorandum (the "**CIM**"). Sale Declaration ¶ 7.

6 ***B. Form and Manner of Sale Notice***

7 26. The Auction, if needed, will be held on **September 10, 2024 at 12:00 p.m. (prevailing Eastern Time)** at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

8 27. By **July 29, 2024**, or as soon as reasonably practicable after entry of the Bidding
 9 Procedures Order, the Debtors will cause the notice of the Sale, Bidding Procedures, Auction, and
 10 Sale Hearing (the "**Sale Notice**"), substantially in the form attached as **Exhibit B** to the Bidding
 11 Procedures Order, to be served on the parties that receive notice of this Motion. In addition, by
 12 **July 29, 2024**, or as soon as practicable after entry of the Bidding Procedures Order, the Debtors
 13 will post the Sale Notice and Bidding Procedures on their case website,
 14 <https://dm.epiq11.com/case/nevadacopper>, and publish the Sale Notice, with any modifications
 15 necessary for ease of publication, on one occasion in *The Wall Street Journal (National Edition)*,
 16 to provide notice to any other potential interested parties. The Debtors submit that, in light of the
 17 nature of the relief requested, no other or further notice need be given.

18 28. The Sale Notice is reasonably calculated to provide all interested parties with timely
 19 and proper notice of the proposed Sale, including the date, time, and place of the Auction (if any),
 20 the Bidding Procedures, and the dates and deadlines related thereto. Accordingly, the Debtors
 21 request that the Court find that the noticing procedures are adequate and appropriate under the
 22 circumstances and comply with the requirements of Bankruptcy Rule 2002 and that the form and
 23 manner of the Sale Notice be approved and no other or further notice of the Sale, Bidding
 24 Procedures, Auction, and Sale Hearing be required.

1 C. ***Assumption and Assignment Procedures***

2 29. In addition to the Sale Notice, the Debtors also seek approval of the Assumption
 3 and Assignment Notice to facilitate the fair and orderly assumption, assumption and assignment,
 4 or rejection of certain of the Executory Contracts and Unexpired Leases as may be designated in
 5 any Successful Bid. The proposed procedures (the “***Assumption and Assignment Procedures***”)
 6 for assumption and assignment of the Executory Contracts and Unexpired Leases are set forth in
 7 the Assumption and Assignment Notice attached as **Exhibit C to Exhibit 1**. For convenience,
 8 certain key terms of the Assumption and Assignment Procedures are summarized below:⁷

- 9 i. **Assumption and Assignment Notice:** By **July 30, 2024**, or as soon as reasonably
 10 practicable thereafter, the Debtors shall serve a notice of contract assumption (the
 11 “***Assumption and Assignment Notice***”), in substantially the form attached to the
 12 Bidding Procedures Order as Exhibit C via first class mail on the Contract
 13 Counterparties and provide a copy of the same to the Consultation Parties. The
 14 Contract Assumption Notice shall inform each recipient of the timing and
 15 procedures relating to such assumption and assignment, and, to the extent
 16 applicable, (a) the title of the executory contract or lease, (b) the name of the
 17 counterparty to the executory contract or lease, (c) Debtors’ good faith estimates of
 18 the Cure Amounts, if any, required in connection with the executory contract or
 19 lease, and (d) the Assumption and Cure Objection Deadline; *provided, however,*
 20 that service of a Contract Assumption Notice does not constitute an admission
 21 that any Contract listed thereon is an executory contract or that such stated
 22 Cure Amount constitutes a claim against the Debtors or a right against any
 23 Successful Bidder, all rights with respect thereto being expressly reserved.
 24 The inclusion of a contract on the Assumption and Assignment Notice is not a
 25 guarantee that such contract will ultimately be assumed and assigned.
- 26 ii. **Cure Amounts:** The payment of the applicable Cure Amounts by the Debtors or
 27 the Successful Bidder, as applicable, shall (a) effect a cure of all defaults existing
 28 thereunder, (b) compensate for any actual pecuniary loss to such counterparty
 resulting from such default, and (c) together with the assumption of the ultimately
 assumed Executory Contracts by the Debtors and the assignment of such Executory
 Contracts to the Successful Bidder, constitute adequate assurance of future
 performance thereof.
- 29 iii. **Supplemental Contract Assumption Notice.** If the Debtors, at any time after the
 30 Assumption and Assignment Service Deadline (a) identify additional Executory
 31 Contracts or Unexpired Leases that may be assumed by and assigned to the
 32 Successful Bidder, (b) remove any Executory Contracts or Unexpired Leases from

7 This summary description and any further descriptions in this Motion of the provisions of the Assumption and Assignment Procedures are for summary purposes only, do not restate the terms of the Assumption and Assignment Procedures in their entirety, and in the event of any inconsistency with the Assumption and Assignment Procedures, the Assumption and Assignment Procedures in the Assumption and Assignment Notice will govern. Capitalized terms used but not defined in this section shall have the meanings ascribed to them in the Assumption and Assignment Procedures.

1 the list attached to the Assumption and Assignment Notice, or (c) modify the
 2 previously stated Cure Amount associated with any Executory Contract or
 3 Unexpired Lease; then the Debtors will promptly file with this Court and serve by
 4 first-class mail a supplemental notice of contract assumption (a “***Supplemental
 5 Assumption and Assignment Notice***”) on each of the Contract Counterparties
 6 affected by the Supplemental Assumption and Assignment Notice. Each
 7 Supplemental Assumption Notice will include the same information with respect
 8 to listed Executory Contracts as was included in the Assumption and Assignment
 9 Notice. A Successful Bidder may designate additional Executory Contracts to be
 10 assumed and assigned up to seven business days prior to closing and may remove
 11 Executory Contracts or Unexpired Leases from the list of Executory Contracts and
 12 Unexpired Leases up to two business days prior to closing.

- 13
- 7 iv. **Objections:** Objections, if any, to the proposed assumption and assignment or the
 8 Cure Amount proposed with respect thereto, must (a) be in writing, (b) comply with
 9 the applicable provisions of the Bankruptcy Rules, and the Local Rules, (c) state
 10 with specificity the nature of the objection and, if the objection pertains to the
 11 proposed Cure Amount, state the correct Cure Amount alleged by the objecting
 12 counterparty, together with any applicable and appropriate documentation in
 13 support thereof, and (d) be filed with the Court and served upon (1) proposed
 14 counsel to the Debtors, (2) counsel to the Stalking Horse Bidder, if any, (3) the Bid
 15 Notice Parties (as defined in the Bidding Procedures), and (4) any other party that
 16 has filed a notice of appearance in these Chapter 11 Cases, so as actually to be
 17 received on or before the Sale Objection Deadline or deadline set forth in the
 18 Supplemental Assumption and Assignment Notice, as applicable.
 - 19 v. **Dispute Resolution:** In the event that the Debtors and a Contract Counterparty
 20 cannot resolve an objection to a Cure Amount, the Executory Contract or Unexpired
 21 Lease at issue may be assumed by the Debtors and assigned to the Successful
 22 Bidder, provided that the Debtors shall segregate the Cure Amount that the Contract
 23 Counterparty asserts is required to be paid, pending a resolution of the dispute by
 24 the Court or mutual agreement by the parties. Any objection to the proposed
 25 assumption and assignment of a contract or related Cure Amount proposed in
 26 connection with the Sale that remained unresolved as of the Sale Hearing, shall be
 27 heard at the Sale Hearing (or at a later date as fixed by the Court).
 - 28 vi. **Contract Assumption:** No Executory Contract or Unexpired Lease shall be deemed
 29 assumed and assigned pursuant to section 365 of the Bankruptcy Code until the
 30 later of (i) the date the Court has entered an order assuming and assigning such
 31 Executory Contract or Unexpired Lease or (ii) the date the Sale has closed.

21 **D. Provisions Under Local Rule 6004**

22 30. Set forth below is the manner in which the Debtors expect to address the following
 23 documents and provisions identified in Local Rule 6004:

- 24
- 25 i. **Proposed Asset Purchase Agreement:** The Form APA will be filed on the docket
 26 of the Chapter 11 Cases, included in the Data Room, and provided to Potential
 27 Bidders.
 - 28 ii. **Lienholders List:** The Debtors will file a list of all lienholders with an interest in
 29 the property to be sold under the Sale Order prior to the Sale Hearing.

- iii. Sale Order: The Debtors will file a proposed form of Sale Order prior to the Sale Hearing.
 - iv. Consumer Privacy: The Debtors have not made any request for the appointment of a consumer privacy ombudsman under 11 U.S.C. § 332, as the potential losses or gains of privacy to consumers if the Sale is approved by the Court are not expected to be in any way substantial.
 - v. Material Terms: The Debtors will highlight the relevant material terms specified in Local Rule 6004(b)(6) as they relate to the Successful Bid in a separate filing prior to the Sale Hearing.

Basis for Relief

II. Approval of the Bidding Procedures Is in the Best Interests of the Debtors' Estates and Should be Approved.

31. The Bidding Procedures are appropriate under sections 363 and 105 of the Bankruptcy Code and should be approved. Section 363(b) of the Bankruptcy Code provides that a debtor in possession, “after notice and a hearing,” may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Section 105(a) provides in pertinent part that “[t]he Court may issue any order, process or judgment that is necessary and appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

32. The Debtors submit that the Bidding Procedures are a valid exercise of their business judgment, fair and appropriate under the circumstances, consistent with procedures routinely approved by bankruptcy courts, and are in the best interest of their estates. The Bidding Procedures provide for an orderly, uniform, and competitive bidding process through which interested parties may submit offers to purchase the Assets.

33. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to reach the highest or otherwise best offer reasonably available for the Debtors' businesses. Sale Declaration ¶ 10. Potential Bidders will have sufficient notice and an opportunity to conduct diligence and finalize their bids, particularly in light of the fact that it is expected that many potential bidders already engaged with the Prepetition Investment Banker, Moelis, and the Debtors' management in the months leading up to the Petition Date.

1 34. The Bidding Procedures are designed to allow the Debtors an adequate opportunity
 2 to consider competing bids and to select the highest or otherwise best offers for the potential
 3 completion of a Sale. The Bidding Procedures provide for the Debtors to conduct the Auction, if
 4 necessary, in a fair and transparent manner that will encourage participation by financially capable
 5 bidders with demonstrated ability to timely consummate a Sale. Moreover, the Bidding Procedures
 6 give the Debtors the flexibility to designate a “stalking horse bid” to potentially set a higher floor
 7 for bids. In addition, the Order provides that the Debtors may alter the Sale Schedule or run
 8 multiple Auctions as necessary, thereby preserving the Debtors’ ability to run a tailored, value-
 9 maximizing process for any particular group of Assets.

10 35. The Bidding Procedures are designed to promote what courts have deemed to be
 11 the paramount goal of a chapter 11 sale: maximizing the value of sale proceeds received by the
 12 estate. *In re Golden Empire Air Rescue, Inc.*, No. BAP EC-07-1086, 2007 WL 7540946, at *7
 13 (B.A.P. 9th Cir. Oct. 25, 2007) (“The main issue with respect to the sale of estate assets is whether
 14 the trustees obtained the best possible price in light of their fiduciary duty to maximize the value
 15 to the estates. A sale that is well advertised and subject to overbids is usually the preferred method
 16 to achieve the best possible price.”); *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 WL
 17 7728109, at *90 (Bankr. D. Del. Aug. 15, 2007) (citing cases and noting that “courts recognize
 18 that procedures intended to enhance competitive bidding are consistent with the goal of
 19 maximizing the value received by the estate and therefore are appropriate in the context of
 20 bankruptcy sales”); *In re Celsius Network LLC*, No. 22-10964 (MG), 2022 WL 14193879, at *6,
 21 7 (Bankr. S.D.N.Y. Oct. 24, 2022) (“[G]enerally, the Court will entertain a motion for approval
 22 . . . of proposed bidding procedures if such procedures are, as a matter of reasonable business
 23 judgment, likely to maximize the sale price,” and finding bidding procedures there “work[ed] to
 24 ensure a fair bidding process and to maximize the sale price of the property in the auction” (second
 25 alteration in original)) (quoting the Sale Guidelines and Bankruptcy Code section 363(b)); *In re
 26 Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders
 27 is to facilitate an open and fair public sale designed to maximize value for the estate.”); *see also*
 28

1 *Silverman as Tr. of Stanley C. Silverman Revocable Tr. , dated Aug. 26, 2006 v. Birdsell*, 796 F.
 2 App'x 935, 937 (9th Cir. 2020) (holding that under § 363, a bankruptcy court must “assure that
 3 optimal value is realized by the estate under the circumstances”) (quoting *Simantob v. Claims
 4 Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (9th Cir. BAP 2005)). Accordingly, the
 5 Bidding Procedures will assist the Debtors in maximizing the value of their estates.

6 36. As described above, the sale timeline and postpetition marketing period thereunder
 7 is reasonable. The DIP Milestones were heavily negotiated at arm’s length, and separately
 8 provided for the Debtors’ financing under their DIP Facility, and failure to adhere to such timeline
 9 could jeopardize the process that has been agreed to and funded by the Debtors’ DIP Lenders. It
 10 is noteworthy, that courts in this district and other districts have approved procedures containing
 11 similar timelines (if not shorter) than the sale timeline proposed herein. *See, e.g., In re Cash Cloud
 12 Inc. dba Coin Cloud*, No. 23-10423 (MKN) (Bankr. D. Nev. Apr. 27, 2023), ECF No. 483
 13 (approving 63-day sale timeline); *In re Red Rose, Inc.*, Case No. 20-12814 (MKN) (Bankr. D. Nev.
 14 Nov. 6, 2020), ECF No. 1281 (approving 46-day sale timeline); *In re Las Vegas Monorail
 15 Company*, Case No. 20-14451 (NMC) (Bankr. D. Nev. Sept. 30, 2020), ECF No. 98 (approving
 16 41-day sale timeline); *In re Metal Partners Rebar, LLC, et al.*, Case No. 20-12878 (ABL) (Bankr.
 17 D. Nev. Aug 11, 2020) (approving 50-day sale timeline).

18 37. The Debtors respectfully submit that the proposed Bidding Procedures will
 19 encourage competitive bidding, are appropriate under the relevant standards governing auction
 20 proceedings in bankruptcy proceedings, and are consistent with the legal standards in the Ninth
 21 Circuit. Accordingly, the Bidding Procedures should be approved, because, under the
 22 circumstances, they are reasonable, appropriate, and in the best interests of the Debtors, their
 23 estates, and all parties in interest.

24 **III. The Bid Protections Have a Sound Business Purpose and Should Be Approved.**

25 38. In the event that the Debtors seek to appoint a Stalking Horse Bidder, the Debtors
 26 seek authority to offer customary bid protections, consisting of a Break-Up Fee and Expense
 27

1 Reimbursement, in an aggregate amount not to exceed three percent of the applicable purchase
 2 price. The use of a stalking horse in a public auction process for the sale of a debtor's assets is a
 3 customary practice in chapter 11 cases, as the use of a stalking horse bid is, in many circumstances,
 4 the best way to maximize value in an auction process by "establish[ing] a framework for
 5 competitive bidding and facilitat[ing] a realization of that value." *Off. Comm. of Unsecured
 6 Creditors v. Interforum Holding LLC*, No. 11-CV-219, 2011 WL 2671254, No. 11- 219, *1 (E.D.
 7 Wis. July 7, 2011).

8 39. Generally, bidding protections, such as break-up fees, are a normal and, in many
 9 cases, necessary component of significant sales under the Bankruptcy Code. *See In re Integrated
 10 Res., Inc.*, 147 B.R. 650, 659–60 (S.D.N.Y. 1992) ("Break-up fees are important tools to encourage
 11 bidding and to maximize the value of the debtor's assets. . . . In fact, because the . . . corporation
 12 has a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to
 13 maximize value."). As a result, courts routinely approve such bidding protections in connection
 14 with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the
 15 estate. *See In re Energy Future Holdings Corp.*, 904 F.3d 298 (3d Cir. 2018) (holding that "[T]he
 16 allowability of break-up fees . . . depends upon the requesting party's ability to show that the fees
 17 [a]re actually necessary to preserve the value of the estate") (internal quotations omitted)
 18 (alterations in original); *In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010);
 19 *In re O'Brien Env't Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999). The Debtors believe that the
 20 allowance of the Stalking Horse Bid Protections are in the best interests of the Debtors' estates
 21 and their creditors, as a Stalking Horse Bidder, if designated, will establish a floor for further
 22 bidding that may increase the consideration given in exchange for the Assets for the benefit of the
 23 Debtors' estates.

24 40. A proposed bidding incentive, such as a break-up fee, should be approved when it
 25 is in the best interests of the estate. *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill.
 26 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994) (stating
 27 that the standard is whether the transaction will "further the diverse interests of the debtor, creditors
 28

1 and equity holders, alike") (quoting *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.1983)); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding
 2 incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl. Energy, Inc.* (*In re O'Brien Envtl. Energy, Inc.*), 181 F.3d 527, 533 (3d Cir. 1999) (holding even though
 3 bidding incentives are measured against a business judgment standard in non-bankruptcy
 4 transactions, the administrative expense provisions of section 503(b) govern in the bankruptcy
 5 context).

6
 7
 8 41. The Debtors propose to pay the Stalking Horse Bid Protections only in the event
 9 they determine, after good faith, arm's-length negotiations, that designating a Stalking Horse
 10 Bidder would be necessary and beneficial for their estates. Accordingly, for the reasons set forth
 11 above, the Debtors respectfully submit that the Court grant the Debtors the authority to incur and
 12 pay the Stalking Horse Bid Protections to the extent the Stalking Horse Bid Protections are
 13 necessary to preserve the value of the Debtors' estates.

14 **IV. The Form and Manner of Notice Should Be Approved.**

15 42. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors
 16 with 21 days' notice of the Auction. Pursuant to Bankruptcy Rule 2002(c), such notice must
 17 include the time and place of the Auction and the deadline for filing any objections to such a sale.

18 43. As soon as reasonably practicable following entry of the Order, the Debtors will
 19 cause the Sale Notice to be served upon the Sale Notice Parties (as defined in the Bidding
 20 Procedures). In addition, no later than July 29, 2024, or as soon as reasonably practicable after
 21 entry of the Bidding Procedures Order, the Debtors shall publish the Sale Notice, with any
 22 modifications necessary for ease of publication, on one occasion in *The Wall Street Journal*
 23 (*National Edition*), to provide notice to any other potential interested parties, and post the Sale
 24 Notice on their case website, <https://dm.epiq11.com/case/nevadacopper>.

25 44. The Debtors submit that the Sale Notice constitutes good and adequate notice of
 26 the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the
 27
 28

1 applicable requirements of Bankruptcy Rule 2002. Accordingly, no further notice is necessary
 2 and the Debtors request that this Court approve the form and manner of the notice of the Sale
 3 Notice.

4 **V. Assumption and Assignment Procedures Are Appropriate and Should Be
 5 Approved.**

6 45. As set forth above, the Sale contemplates the assumption and assignment of
 7 Executory Contracts and Unexpired Leases to the Successful Bidder. In connection with this
 8 process, the Debtors believe it is necessary to establish assumption and assignment procedures by
 9 which: (i) the Debtors and Contract Counterparties can reconcile cure obligations, if any, in
 10 accordance with section 365 of the Bankruptcy Code; and (ii) such counterparties can object to the
 11 assumption and assignment of the Contracts and/or related cure payments (the “**Assumption and**
 12 **Assignment Procedures**”). As set forth in the Bidding Procedures Order, the Debtors also request
 13 that any party that fails to object to the proposed assumption and assignment of any Contract be
 14 deemed to consent to the assumption and assignment of the applicable contract pursuant to section
 15 365 of the Bankruptcy Code on the terms set forth in the Sale Order, along with the cure payments
 16 identified in the Contract Assumption Notice. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858
 17 (Bankr. D.N.J. 1994) (noting by not objecting to sale motion, creditor deemed to consent); *In re*
 18 *Shary*, 152 B.R. 724, 725–26 (Bankr. N.D. Ohio 1993) (stating that “creditor who receives notice,
 19 but fails to oppose the proposed sale, is deemed to have consented”); *Pelican Homestead v. Wooten*
 20 (*In re Gabel*), 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

21 46. The Debtors believe that the Assumption and Assignment Procedures are fair and
 22 reasonable, provide sufficient notice to parties to the executory contracts and leases, and provide
 23 certainty to all parties in interest regarding their obligations and rights in respect thereof.
 24 Accordingly, the Debtors request the Court approve the Assumption and Assignment Procedures
 25 set forth in the Bidding Procedures Order.

1 **VI. The Sale Transaction Should be Approved as an Exercise of Sound Business
2 Judgment.**

3 47. Ample authority exists for approval of the Sale. Section 363 of the Bankruptcy
4 Code provides, in relevant part, “[t]he trustee, after notice and a hearing, may use, sell, or lease,
5 other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). It is
6 well settled that the bankruptcy court has considerable discretion in deciding whether to approve
7 or disapprove the use of estate property by a debtor in possession, in the light of sound business
8 justification. *In re Walter*, 83 B.R. 14, 17 (B.A.P. 9th Cir. 1988); *see also In re Claar Cellars*
9 *LLC*, No. 20-00044-WLH11, 2020 WL 1238924, at *3 (Bankr. E.D. Wash. Mar. 13, 2020).(noting
10 that section 363(b)(1) “codifies principles of long lineage in United States bankruptcy law — if an
11 estate is to be maximized, then its representative must enjoy a flexible and broad mandate to use
12 or sell the estate's assets to realize or create value”). Moreover, pursuant to section 105(a) of the
13 Bankruptcy Code a “[c]ourt may issue any order, process or judgment that is necessary or
14 appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

15 48. Courts in the Ninth Circuit and others have required that the sale of a debtor's assets
16 be based upon the sound business judgment of the debtor. *See In re Lahijani*, 325 B.R. at 289
17 (stating that “[o]rdinarily, the position of the trustee is afforded deference, particularly where
18 business judgment is entailed in the analysis or where there is no objection”); *In re Walter*, 83 B.R.
19 at 17 (holding that a bankruptcy court “has considerable discretion in deciding whether to approve
20 or disapprove the use of estate property by a debtor in possession, in the light of sound business
21 justification”); *In re Catalina Sea Ranch, LLC*, No. 2:19-BK-24467-NB, 2020 WL 1900308, at *6
22 (Bankr. C.D. Cal. Apr. 13, 2020) (holding that “there must be some articulated business
23 justification, other than the appeasement of major creditors, for using, selling or leasing property
24 out of the ordinary course of business”) (quoting *In re Lionel Corp.*, 722 F.2d at 1070).

25 49. Once a court is satisfied that there is a sound business justification for the proposed
26 sale, the court then has the ability to determine whether (i) the sale is in the best interest of the
27 estate; (ii) notice to creditors was proper; (iii) the marketing was adequate; and (iv) the sale is
28

negotiated and proposed in good faith and is made at arm's-length. *See In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *accord In re Lionel Corp.*, 722 F.2d at 1069; *In re Slates*, No. BAP EC-12-1168-KIDJU, 2012 WL 5359489, at *11 (B.A.P. 9th Cir. Oct. 31, 2012); *In re Bardos*, No. 6:10-BK-41455-SY, 2016 WL 1161225, at *8 (B.A.P. 9th Cir. Mar. 23, 2016) (noting that “[i]n the Ninth Circuit, a § 363(b)(1) sale does not require a good faith finding.”) (citing to *In re Thomas*, 287 B.R. 782, 785 (B.A.P. 9th Cir. 2002)); *In re DeBilio*, No. BAP CC-13-1441, 2014 WL 4476585, at *6 (B.A.P. 9th Cir. Sept. 11, 2014) (same). Additionally, where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

A. *The Debtors Have Demonstrated a Sound Business Justification for the Proposed Sale.*

50. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (recognizing that paramount goal of any proposed sale of property of estate is to maximize value); *In re Golden Empire Air Rescue, Inc.*, 2007 WL at *7 (holding that the main issue with respect to the approval of the sale of estate assets is whether the trustees obtained the best possible price in light of their fiduciary duty to maximize the value to the estates”).

51. Here, a sound business purpose exists for the Sale because the Debtors believe that the Sale Transaction will maximize the value of their Assets, exposing them to the market as part of a competitive, arm's length process. The Debtors further submit that the Successful Bid will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for

1 the Debtors' estates than would be provided by any other available alternative. As such, the
 2 Debtors' determination to sell the Assets through an Auction process and subsequently to enter
 3 into a purchase agreement with the Successful Bidder will be a valid and sound exercise of the
 4 Debtors' business judgment. The Debtors will submit evidence at the Sale Hearing to support these
 5 conclusions.

6 52. Also, because any sale of the Debtors' Assets likely will contemplate the
 7 assumption of certain of the Debtors' Executory Contracts and Unexpired Leases, it will result in
 8 payment in full for some of the Debtors' creditors. However, as described, the justifications for
 9 pursuing the Sale go beyond the appeasement of major creditors, and instead focus on maximizing
 10 the value of the Debtors' estates for the benefit of all stakeholders. *In re Catalina Sea Ranch,*
 11 *LLC*, 2020 WL at *6.

12 53. Pursuing a sale and marketing process represents a reasonable exercise of the
 13 Debtors' business judgment and is in the best interests of all parties. An orderly but expeditious
 14 sale of the Assets is critical to preserving and realizing their going concern value and, in turn, to
 15 maximizing recoveries for the Debtors' economic stakeholders and preserving jobs. A prompt
 16 sale is also required by the DIP Milestones. Accordingly, based upon the foregoing, the Debtors
 17 request that the Court make a finding that the proposed sale of the Assets is a proper exercise of
 18 the Debtors' business judgment and is rightly authorized.

19 ***B. Adequate and Reasonable Notice of the Auction and Sale Will Be Provided.***

20 54. The notice to third parties that the Debtors propose to provide, as set forth in the
 21 Bidding Procedures Order and Bidding Procedures, is more than adequate and reasonable. The
 22 Sale Notice: (i) will be served in a manner that provides parties in interest notice of the date, time,
 23 and location of the Sale Hearing; (ii) informs parties in interest of the deadlines for objecting to
 24 the Sale or the assumption and assignment of the Executory Contracts; and (iii) otherwise includes
 25 all information relevant to parties interested in or affected by the Sale. Significantly, the form and
 26 manner of the Sale Notice will have been approved by this Court pursuant to the Bidding
 27 Procedures Order after notice and a hearing before it is served on parties in interest.

1 55. Such notice will ensure that actual notice of the Auction, Sale Hearing, and Sale
 2 will be provided to all known creditors of the Debtors, in addition to notice by publication.
 3 Bankruptcy Rules 2002(a) and (c) require the Debtor to notify creditors of the Sale, the terms and
 4 conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections.
 5 The Debtor believes that the proposed notice procedures fully comply with Bankruptcy Rule 2002
 6 and are reasonably calculated to provide timely and adequate notice of the Sale, Bidding
 7 Procedures, Auction, and Sale Hearing to the Debtor's creditors and all other parties in interest
 8 that are entitled to notice, as well as those parties that have expressed a bona fide interest in
 9 acquiring the Assets. Such notice, together with the authority pursuant to sections 363 and 365 of
 10 the Bankruptcy Code, will enable the Court to make findings at the Sale Hearing and in the Sale
 11 Order that the ultimate purchaser of the Assets shall not be liable under theories of successor
 12 liability in connection with such Acquired Assets.

13 C. ***The Proposed Sale Process Will Produce a Fair and Reasonable Purchase Price
 14 for the Assets.***

15 56. The Bidding Procedures and the Debtors' marketing process is designed to promote
 16 active bidding by interested parties and to reach the highest or otherwise best offer reasonably
 17 available for the Debtors' businesses. Sale Declaration ¶¶ 10, 14. As a result, the Debtors are
 18 confident that the sale process will culminate in the Debtors obtaining the highest or otherwise
 19 best value for the applicable Assets which will inure to the benefit of all parties in interest in these
 20 Chapter 11 Cases.

21 57. It is well-settled that, where there is a court-approved auction process, a full and
 22 fair price is presumed to have been obtained for the assets sold, as the best way to determine value
 23 is exposure to the market. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*,
 24 526 U.S. 434, 457 (1999); *see also In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL
 25 1820326, *4 (Bankr. D. Del. 2001) (while a "section 363(b) sale transaction does not require an
 26 auction procedure," "the auction procedure has developed over the years as an effective means for
 27 producing an arm's length fair value transaction"); *In re Lahijani*, 325 B.R. at 289 (noting that

“[t]he price achieved by an auction is ordinarily assumed to approximate market value when there is competition by an appropriate number of bidders”). Consequently, the ultimately successful bid, after being subject to a “market check” in the form of a well-run marketing process and auction, will constitute, in the Debtors’ reasonable business judgment, the highest or otherwise best offer for the Assets and will provide a greater recovery for their estates than any known or practicably available alternative. *See, e.g., In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (while a “section 363(b) sale transaction does not require an auction procedure[, t]he auction procedure has developed over the years as an effective means for producing an arm’s length fair value transaction”); *In re Golden Empire Air Rescue, Inc.*, 2007 WL at *7 (holding that “[a] sale that is well advertised and subject to overbids is usually the preferred method to achieve the best possible price”).

58. As noted above, prior to the Bid Deadline, Moelis will continue to market the Assets and solicit other offers consistent with the Bidding Procedures, including, for example, by contacting previously solicited parties, continuing to provide acceptable bidders with Data Room access and requested information, considering a variety of alternative transaction structures, and otherwise assisting the Debtors with all efforts to increase transaction value. In this way, the number of bidders that are eligible to participate in a competitive Auction process will be maximized, or, if no Auction is held because no Auction is necessary the purchase price will, conclusively, be deemed fair value.

D. *The Sale Has Been Proposed In Good Faith Without Collusion and the Successful Bidder Is a “Good-Faith Successful Bidder”*

59. The Debtors request that the Court find the Successful Bidder is entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the sale of Assets. Section 363(m) of the Bankruptcy Code provides in pertinent part:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease or property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the

1 appeal, unless such authorization and such sale or lease were stayed
 2 pending appeal.

3 11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets
 4 sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in
 5 the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchaser
 leased or purchased the assets in “good faith.”

6 60. Although the Bankruptcy Code does not define “good faith,” courts have held that
 7 a purchaser shows its good faith through the integrity of its conduct during the course of the sale
 8 proceedings, finding that where there is a lack of such integrity, a good-faith finding may not be
 9 made. *See, e.g., In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986)
 10 (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)) (“Typically, the
 11 misconduct that would destroy a [buyer’s] good faith status at a judicial sale involves fraud,
 12 collusion between the [proposed buyer] and other bidders or the trustee, or an attempt to take
 13 grossly unfair advantage of other bidders.”); *In the Matter of Andy Frain Services, Inc.*, 798 F.2d
 14 1113 (7th Cir. 1986) (same); *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).
 15 The Debtors submit that the Successful Bidder(s), will be “good faith purchasers” within the
 16 meaning of section 363(m) of the Bankruptcy Code, and the Stalking Horse purchase agreement,
 17 if any, or the Form APA, or any marked versions thereof, would be a good-faith, arm’s-length
 18 agreement entitled to the protections of section 363(m) of the Bankruptcy Code.⁸ *First*, as set forth
 19 in more detail above, the consideration to be received by the Debtors from a Successful Bidder
 20 will be substantial, fair, and reasonable. *Second*, any sale agreement with a Successful Bidder will
 21 arise from the culmination of a competitive process in which all parties will be represented by
 22 counsel and all negotiations will be conducted on an arm’s-length, good-faith basis. *Third*, the

24 ⁸ The Debtors believe that a finding of good faith within the meaning of section 363(m) of the Bankruptcy Code
 25 will be appropriate for any Successful Bidder. Pursuant to the Bidding Procedures, any Successful Bidder will
 26 have had to present a proposal in accordance with the Bidding Procedures. In addition, the Debtors will not
 27 choose as the Successful Bidder or Backup Bidder (as defined in the Bidding Procedures) any entity whose good
 28 faith under section 363(m) of the Bankruptcy Code can reasonably be doubted and will be prepared to present the
 Court with sufficient evidence to allow the Court to find that the “good faith” standard of section 363(m) of the
 Bankruptcy Code has been satisfied.

Bidding Procedures are designed to ensure that no party is able to exert undue influence over the process, and it is expect that there will not be any indication of any “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders” or similar conduct that would cause or permit the Sale to be avoided under section 363(n) of the Bankruptcy Code. *Finally*, any bids that the Debtors ultimately determine to be Successful Bids will have been evaluated and approved by the Debtors in consultation with their advisors and the Consultation Parties. Accordingly, the Debtors believe that the Successful Bidder, if any, and any purchase agreement associated with a Successful Bid should be entitled to the full protections of section 363(m) of the Bankruptcy Code.

E. A Sale Free and Clear of All Liens, Claims, Interests, or Other Encumbrances, to the Fullest Extent Permitted by the Bankruptcy Code, Is Appropriate.

61. In the interest of attracting the best offers, the Assets should be sold free and clear of any and all liens, claims, interests, and other encumbrances, to the fullest extent permitted by the Bankruptcy Code, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances to attach to the proceeds of the applicable Sale. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party’s interest in the property if: (i) applicable nonbankruptcy law permits such a free and clear sale; (ii) the holder of the interest consents; (iii) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same). The purpose of section 363(f) is to allow debtors to maximize the value of the estates in a sale. *In re Realia, Inc.*, 2012 Bankr. LEXIS 1083, at *31-31, 2012 WL 833372 (9th Cir. BAP) (“the purpose of the ‘free and clear’ language [in section 363(f)] is to allow

1 the debtor to obtain a maximum recovery on its assets in the marketplace”), *aff’d*, 2014 U.S. App.
 2 LEXIS 7138, 2014 WL 1466227 (9th Cir.).

3 62. The Debtors submit that any interest in the Assets that will not be an assumed
 4 liability satisfies or will satisfy at least one of the five conditions of section 363(f) of the
 5 Bankruptcy Code, and that any such interest will be adequately protected by either being paid in
 6 full at the time of closing, or by having it attach to the net proceeds of the Sale, subject to any
 7 claims and defenses the Debtors may possess with respect thereto. The Debtors accordingly
 8 request authority to convey the Assets to the Successful Bidder, if any, free and clear of all
 9 encumbrances, with any such encumbrances to attach to the proceeds of the Sale Transaction.

10 **VII. Assumption and Assignment of Assigned Contracts Should Be Approved.**

11 A. ***The Assumption and Assignment Procedures Reflect the Debtors’ Reasonable***
Business Judgment.

12 63. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject
 13 to the court’s approval, may assume or reject any executory contract or unexpired lease of the
 14 debtor.” 11 U.S.C. § 365(a). The Debtors’ decision to assume or reject an executory contract or
 15 unexpired lease must only satisfy the “business judgment rule” and will not be subject to review
 16 unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Group of*
Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co., 318 U.S. 523 (1943)
 17 (applying Bankr. Act section 77(b), predecessor to section 365 of the Bankruptcy Code, and
 18 rejecting test of whether executory contract was burdensome in favor of whether rejection is within
 19 debtor’s business judgment); *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665, 670 (9th Cir.
 20 2007) (holding that “a bankruptcy court applies the business judgment rule to evaluate a [debtor-
 21 in-possession]’s rejection decision”); *In re X10 Wireless Tech., Inc.*, No. BAP WW-04-1328-PST,
 22 2005 WL 6960205, at *3 (B.A.P. 9th Cir. Apr. 5, 2005) (holding that “[w]hether to assume or
 23 reject an executory contract is left to the business judgment of the trustee or debtor in possession”);
 24 *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989) (describing
 25

1 deference to a debtor's business judgment as "breathing space afforded [to] the debtor to consider
 2 whether to reject or assume executory contracts under the Code").

3 64. Upon finding that a debtor has exercised its sound business judgment in
 4 determining to assume an executory contract or unexpired lease, courts will approve the
 5 assumption under section 365(a) of the Bankruptcy Code if the transaction is in the best interests
 6 of the estate. *See In re Station Casinos, Inc.*, No. 09-52477-GWZ, 2009 WL 8519660, at *4
 7 (Bankr. D. Nev. July 28, 2009) (holding that "[i]n connection with decisions related to the use of
 8 leases to maximize the value of the estate, courts show deference to a debtor's sound business
 9 decisions"); *In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008) (stating that "the debtor's
 10 interests are paramount in the balance of control is underscored by the business judgment standard
 11 employed by courts in determining whether to permit the debtor to assume or reject the contract").

12 65. The assumption of the Assigned Contracts in connection with a Sale is an exercise
 13 of the Debtors' sound business judgment. It is unlikely that any purchaser would want to acquire
 14 the Assets unless Executory Contracts and Unexpired Leases that are needed to manage the
 15 Debtors' day-to-day operations were to be included in the transaction. Moreover, the Assigned
 16 Contracts will have been selected by the successful bidder, and, therefore, by definition will be
 17 part of the bid that is selected as the highest or best. Accordingly, because the Assigned Contracts
 18 are necessary to operate the Debtors' businesses and, as such, are essential to obtaining the highest
 19 or otherwise best offer for the Debtors' businesses, the Debtors' assumption of the Assigned
 20 Contracts is an exercise of sound business judgment and should be approved.

21 66. The Debtors submit that, in light of the foregoing, the assumption and assignment
 22 of the Assumed Contracts by way of the Assumption and Assignment Procedures should be
 23 approved as an exercise of their business judgment.

24 ***B. Defaults Will Be Cured in Connection with the Sale Process.***

25 67. Upon finding that a debtor has exercised its business judgment in determining that
 26 assuming an Executory Contract or Unexpired Lease is in the best interest of its estate, courts must
 27 then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy
 28

1 Code, specifically that a debtor (i) cure, or provide adequate assurance of promptly curing,
 2 prepetition defaults in the executory contract, (ii) compensate parties for pecuniary losses arising
 3 therefrom, and (iii) provide adequate assurance of future performance thereunder.

4 68. The consummation of a Sale, which will involve the assignment of the Assigned
 5 Contracts, will be contingent upon the Debtors' compliance with the applicable requirements of
 6 section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any
 7 outstanding defaults under the Assigned Contracts must be cured or that adequate assurance be
 8 provided that such defaults will be promptly cured. Section 365(b)(1) of the Bankruptcy Code,
 9 therefore, "attempts to strike a balance between two sometimes competing interests, the right of
 10 the contracting non-debtor to get the performance it bargained for and the right of the debtor's
 11 creditors to get the benefit of the debtor's bargain." *In re Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr.
 12 S.D.N.Y. 1980).

13 69. As set forth above, the Debtors propose to file with the Court and serve on each
 14 Counterparty, the Assumption and Assignment Notice indicating the Debtors' calculation of the
 15 amounts necessary to cure any prepetition monetary defaults for each assumed or assumed and
 16 assigned contract. The Counterparties will have the opportunity to file objections to the proposed
 17 assumption and assignment of the Assigned Contracts to the Successful Bidder, including the
 18 proposed Cure Amounts. Accordingly, the Debtors are confident that any such cure of defaults
 19 under the Assigned Contracts will be achieved fairly, efficiently, and properly, consistent with the
 20 Bankruptcy Code.

21 **C. Adequate Assurance of Future Performance Will Be Provided to Counterparties.**

22 70. Similarly, the Debtors submit that the third requirement of section 365(b) of the
 23 Bankruptcy Code — adequate assurance of future performance — is also satisfied given the facts
 24 and circumstances present here. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor
 25 may assign an executory contract or unexpired lease of nonresidential real property if "adequate
 26 assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C.
 27 § 365(f)(2)(B). The meaning of "adequate assurance of future performance" depends on the facts
 28

1 and circumstances of each case, but should be given “practical, pragmatic construction.” *See*
 2 *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J.
 3 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y.
 4 1985) (adequate assurance of future performance does not mean absolute assurance that debtor
 5 will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D.
 6 Ill. 1985) (“[a]lthough no single solution will satisfy every case, the required assurance will fall
 7 considerably short of an absolute guarantee of performance.”). Among other things, adequate
 8 assurance may be given by demonstrating the assignee’s financial health and experience in
 9 managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-
 10 06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective
 11 assignee of lease has financial resources and expressed willingness to devote sufficient funding to
 12 business to give it strong likelihood of succeeding).

13 71. The Debtors believe that they can and will demonstrate that the requirements for
 14 assumption and assignment of the Assumed Contracts to the Successful Bidder will be satisfied.
 15 As set forth in the Bidding Procedures, for a bid to qualify as a “Qualified Bid,” a Potential Bidder
 16 must include with its bid such financial and other information setting forth adequate assurance of
 17 future performance under section 365(f)(2)(B) of the Bankruptcy Code and the bidder’s
 18 willingness to perform under any Assigned Contracts (the “Adequate Assurance Information”).
 19 The Debtors will provide Adequate Assurance Information to all Counterparties to the Assigned
 20 Contracts and Counterparties will have an opportunity to file an objection in advance of the Sale
 21 Hearing. The Court therefore should have a sufficient basis to authorize the Debtors to reject or
 22 assume and assign any Executory Contract or Unexpired Lease to be assumed and assigned to any
 23 Successful Bidder. Based on the foregoing, the Debtors’ assumption and assignment of the
 24 Assigned Contracts satisfy the requirements under section 365 of the Bankruptcy Code and should
 25 be approved

Reservation of Rights

72. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an admission that any particular claim is of a type specified or defined hereunder; (v) a request to assume any executory contract or unexpired lease; or (vi) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law

Request for Waiver of Bankruptcy Rules 6004(h) and 6006(d)

73. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of fourteen (14) days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

74. In light of the current circumstances and financial condition of the Debtors, the Debtors believe that in order to maximize value and preserve jobs, the sale of the Assets pursuant to the Sale process must be consummated as soon as practicable. Accordingly, the Debtors request that the Bidding Procedures Order and the Sale Order be effective immediately upon entry of each such order and that the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d) be waived.

Notice

75. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for Region 17; (ii) the 20 largest unsecured creditors of each of the Debtors; (iii) the Internal Revenue Service; (iv) the Office of the United States Attorney for the District of Nevada; (v) counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134,

1 Attn: James Patrick Shea and Bart Larsen; (vi) Milbank LLP, as counsel to KfW IPEX-Bank
2 GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards,
3 New York, NY 10001, Attn: Tyson Lomazow; (vii) Bennett Jones LLP, as counsel to Mercuria
4 Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4,
5 Canada, Attn: Simon Grant; (viii) White & Case LLP, as counsel to Concord Resources Limited
6 as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York,
7 NY 10020, Attn: Philip Abelson; (ix) Davis, Graham & Stubbs LLP, as counsel to Triple Flag
8 Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale
9 agreement, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (x) Cleary
10 Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2
11 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty
12 Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (xi) Kelley Drye & Warren, LLP, as
13 counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007,
14 Attn: James S. Carr, Esq.; and (xii) any party that is required to receive or has requested notice
15 pursuant to Bankruptcy Rule 2002 or Local Rule 2002. The Debtors respectfully submit that, in
16 light of the nature of the relief requested, no other or further notice need be given.

17 [Remainder of page intentionally left blank.]
18
19
20
21
22
23
24
25
26
27
28

1 WHEREFORE, the Debtors respectfully request that the Court grant the relief requested
2 herein and such other and further relief as is just and proper.

3 Dated this 20th day of June 2024.

4 McDONALD CARANO LLP

5 /s/ Ryan J. Work
6 Ryan J. Works (NSBN 9224)
7 Amanda M. Perach (NSBN 12399)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

8 ALLEN OVERY SHEARMAN STERLING US LLP
9 Fredric Sosnick (NYSBN 2472488) (*admitted pro hac vice*)
Sara Coelho (NYSBN 4530267) (*admitted pro hac vice*)
599 Lexington Avenue
New York, New York 10022

10
11 *Proposed Counsel to the Debtors and Debtors in Possession*

1 **EXHIBIT 1**

2 **Proposed Order**

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

- NEVADA COPPER, INC.
 - NEVADA COPPER CORP.
 - NC DITCH COMPANY LLC
 - NC FARMS LLC
 - LION IRON CORP.
 - 0607792 B.C. LTD.

Debtors.¹

Lead Case No.: 24-50566-hlb
Chapter 11

Jointly Administered with:
Case No. 24-50567-hlb
Case No. 24-50568-hlb
Case No. 24-50569-hlb
Case No. 24-50570-hlb
Case No. 24-50571-hlb

Hearing Date:
Hearing Time:

**ORDER (I) APPROVING AUCTION AND BIDDING, NOTICING, AND ASSUMPTION
AND ASSIGNMENT PROCEDURES; (II) SCHEDULING CERTAIN DATES AND
DEADLINES WITH RESPECT THERETO; (III) APPROVING FORM NOTICE TO BE
PROVIDED TO INTERESTED PARTIES; AND (IV) GRANTING RELATED RELIEF**

Upon the *Debtors' Motion* for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures; (B) Approving Stalking Horse Bid Protections; (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction; (D) Approving the Form and Manner of Notice Thereof; (E) Approving the Form APA; and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases; (B) Authorizing the Assumption and Assignment of Assumed Contracts; (C) Authorizing the Sale of Assets; and (III) Granting Related Relief (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”), (i) approving the proposed marketing, auction, and bidding procedures attached hereto as **Exhibit A** (the “**Bidding**

¹ The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 *Procedures*") by which the Debtors will solicit and select the highest or otherwise best offer(s) for
 2 the sale or sales (collectively, the "*Sale*," and each such sale transaction, a "*Sale Transaction*") of
 3 all, substantially all, or any portion of the Debtors' assets (the "*Assets*"); (ii) establishing certain
 4 dates and deadlines related thereto and scheduling an auction or auctions, if any, for the Sale (the
 5 "*Auction*"); (iii) approving the manner of notice of the Auction and sale hearing (the "*Sale*
 6 *Hearing*") as may be necessary; (iv) approving a form of asset purchase agreement, substantially
 7 in the form attached hereto as Exhibit D (the "*Form APA*"); (v) approving procedures for the
 8 assumption and assignment of certain Executory Contracts (as defined below) and Unexpired
 9 Leases (as defined below) in connection with the Sale Transaction, if any; (vi) approving the break-
 10 up fee and expense reimbursements relating to potential stalking horse bidders if the Debtors
 11 determine to enter into such an arrangement with a bidder for the Assets (the "*Stalking Horse Bid*
 12 *Protections*"); and (vii) granting related relief; all as more fully set forth in the Motion; and upon
 13 the Sale Declaration and First Day Declaration; and it appearing that this Court has jurisdiction
 14 over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core
 15 proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order
 16 consistent with Article III of the United States Constitution; and venue being proper before the
 17 Court pursuant to 28 U.S.C. §§ 1408 and 1409; and, under the circumstances, proper and adequate
 18 notice of the Motion and the hearing thereon having been given; and it appearing that no other or
 19 further notice is necessary; and this Court having reviewed the Motion and having heard the
 20 statements in support of the relief requested therein at a hearing before this Court; and it appearing
 21 that the legal and factual bases set forth in the Motion establish just cause for the relief granted
 22 herein; and this Court having determined that the relief sought in the Motion is in the best interests
 23 of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation
 24 and sufficient cause appearing therefor;

25 **IT IS HEREBY FOUND AND DETERMINED THAT:**

26 1. Jurisdiction and Venue. Consideration of the Motion and the relief requested
 27 therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court
 28

1 pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has jurisdiction to consider the Motion and
2 the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334.

3 2. Statutory and Legal Predicates. The statutory and legal predicates for the relief
4 requested in the Motion are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code,
5 Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 3017 and 6004.

6 3. Bidding Procedures. The Debtors have articulated good and sufficient business
7 reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair,
8 reasonable, and appropriate. The Bidding Procedures are reasonably designed to promote a
9 competitive and robust bidding process to generate the greatest level of interest in the Debtors'
10 business resulting in the highest or otherwise best offer. The Bidding Procedures comply with the
11 requirements of Local Rule 6004.

12 4. Sale Notice. The Sale Notice attached hereto as **Exhibit B** and the procedures with
13 respect to such Sale Notice contain the type of information required under Bankruptcy Rule 2002
14 and Local Rule 6004 and comply in all respects with applicable provisions of the Bankruptcy
15 Code, the Bankruptcy Rules, and the Local Rules.

16 5. Assumption and Assignment Procedures. The Debtors have articulated good and
17 sufficient business reasons for the Court to approve the Assumption and Assignment Procedures.
18 The Assumption and Assignment Procedures, including the Assumption and Assignment Notice
19 attached hereto as **Exhibit C**, are fair, reasonable, and appropriate. The Assumption and
20 Assignment Procedures provide an adequate opportunity for all Counterparties to raise any
21 objections to the proposed assumption and assignment or to the proposed Cure Amounts. The
22 Assumption and Assignment Procedures comply with the provisions of section 365 of the
23 Bankruptcy Code and Bankruptcy Rule 6006.

24 6. Notice. All other notices to be provided pursuant to the procedures set forth in the
25 Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto. No
26 further notice is required.

1 7. Relief is Warranted. The legal and factual bases set forth in the Motion establish
 2 just and sufficient cause to grant the relief requested therein.

3 8. Other Findings. The findings and conclusions set forth herein constitute the Court's
 4 findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this
 5 proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of
 6 fact constitute conclusions of law, they are adopted as such. To the extent any of the following
 7 conclusions of law constitute findings of fact, they are adopted as such.

8 **NOW, AND THEREFORE, IT IS HEREBY ORDERED THAT:**

9 9. The Motion is GRANTED as set forth herein.

10 **I. The Bidding Procedures**

11 10. The Bidding Procedures, substantially in the form attached to this Order as
 12 Exhibit A, are approved and incorporated into this Order by reference, as though fully set forth
 13 herein. Accordingly, the failure to recite or reference any particular provision of the Bidding
 14 Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court
 15 that the Bidding Procedures be authorized and approved in their entirety. The Debtors are
 16 authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

17 11. Any deposit (including any Good Faith Deposit) provided by a Qualified Bidder
 18 shall be held in escrow by the Debtors or their agent on terms acceptable to the Debtors (in
 19 consultation with the Consultation Parties), and shall not become property of the Debtors'
 20 bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of
 21 the applicable escrow agreement, the Bidding Procedures, or order of this Court, as applicable.

22 **II. Important Dates and Deadlines**

23 12. Sale Hearing. The Sale Hearing will commence on **Wednesday, September 25, 2024, at 10:00 a.m.** (prevailing Pacific Time). Subject to the terms of the Bidding Procedures,
 24 the Debtors may, in their reasonable business judgment, in consultation with the Consultation
 25 Parties and with the consent of the Successful Bidder(s), adjourn or reschedule any Sale Hearing,
 26 with notice to the Sale Notice Parties.

1 13. Sale Objection Deadline. Any objections to the Sale (a “*Sale Objection*”) by a Sale
 2 Notice Party must be made by **Friday, September 19, 2024, at 12:00 p.m.** (prevailing Pacific
 3 Time) (the “*Sale Objection Deadline*”).³ The Sale Objection Deadline may be extended by the
 4 Debtors with the consent of the Court.

5 14. Competitive Bidding. The following dates and deadlines regarding competitive
 6 bidding are hereby established, in each case subject to extension in accordance with the Bidding
 7 Procedures:

- 8 i. Bid Deadline: **Friday, September 6, 2024, at 12:00 p.m.** (prevailing
 9 Pacific Time), the deadline by which all Qualified Bids must be actually
 received in writing by the Bid Notice Parties (the “*Bid Deadline*”); and
- 10 ii. Auction: **Tuesday, September 10, 2024, at 12:00 p.m. (prevailing
 11 Eastern Time)**, is the date and time the Auction, if one is needed, will be
 12 held at the New York offices of Allen Overy Shearman Sterling US LLP,
 13 599 Lexington Avenue, New York, NY 10022, or at such other time and
 location (including via remote video) as designated by the Debtors, in
 consultation with the Consultation Parties and providing notice to the Sale
 Notice Parties, and subject to the terms of the Bidding Procedures.

14 15. Stalking Horse Bidders and Bid Protections. The Debtors, upon entry of this Order,
 15 shall be authorized, but are not obligated or directed, in an exercise of their reasonable business
 16 judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP
 17 Lenders, to select one or more Stalking Horse Bidders with respect to some or all of the Debtors’
 18 Assets by no later than **August 17, 2024, at 5:00 p.m., prevailing Pacific Time**, enter into a
 19 Stalking Horse Agreement that would provide such Stalking Horse Bidders with Stalking Horse
 20 Bid Protections without further action or order by this Court; *provided, however,* that if a DIP
 21 Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering
 22 submitting, or has actually submitted, a Bid for any Assets, it shall not have consent rights with
 23 respect to the selection of the Stalking Horse Bidder or any protections to be afforded to such
 24 Stalking Horse Bidder.

25
 26 ³ In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business
 27 judgment to pursue a Sale Transaction pursuant to a chapter 11 plan, a separate deadline to object to such Sale
 Transaction shall be set by further order of this Court.
 28

1 16. In the event that the Debtors enter into a Stalking Horse Agreement with one or
2 more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and
3 proposed form of order with the Court (the “*Stalking Horse Notice*”) and serve the Stalking Horse
4 Notice on the Stalking Horse Bidder and the Office of the United States Trustee for Region 17.
5 The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the
6 Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company
7 or sponsor); (ii) set forth the amount of the Stalking Horse Bid and what portion (if any) is cash;
8 (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those
9 that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the
10 amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid; (vi)
11 attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto;
12 and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid
13 Protections. If there are no objections to the Stalking Horse Notice within five business days of
14 filing with the Court, (the “*Notice Period*”), the Debtors may submit an order to the Court that
15 incorporates any comments received during the Notice Period that authorizes the Debtors to
16 designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need
17 for further hearing. If a party timely files an objection to the Stalking Horse Notice in accordance
18 with the Bidding Procedures, the Court shall hold a hearing after the expiration of the Notice Period
19 and as soon thereafter as the Court is available. Upon entry of the order that authorizes the Debtors
20 to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement or otherwise
21 approves the Stalking Horse’s Plan Term Sheet, as applicable, the Debtors are authorized, but not
22 directed, to incur and pay the Stalking Horse Bid Protections to each Stalking Horse Bidder in an
23 aggregate amount not to exceed three percent of the proposed Purchase Price.

24 17. Except as otherwise set forth in the Bidding Procedures, no person or entity, other
25 than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees,
26 “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or
27 entity is deemed to have waived their right to request or to file with this Court any request for
28

1 expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section
2 503(b) or otherwise.

3 **III. Sale Notice Procedures**

4 18. The Sale Notice procedures, substantially in the form set forth in the Sale Notice
5 attached to this Order as **Exhibit B**, are approved. The Debtors are authorized to implement the
6 Sale Notice procedures as set forth in the Bidding Procedures Motion, the Bidding Procedures,
7 and the Sale Notice.

8 **IV. Assumption and Assignment Procedures**

9 19. The (a) Assumption and Assignment Procedures, as set forth in the Bidding
10 Procedures, and (b) the Assumption and Assignment Notice in the form attached to this Order as
11 **Exhibit C**, are approved.

12 20. The Assumption and Assignment Procedures shall govern the assumption or
13 assumption and assignment of all of the Debtors' Contracts and Leases to be assumed or assumed
14 and assigned in connection with the Sale, subject to the payment of any amounts necessary to cure
15 any defaults arising under any such Contract or Lease.

16 **V. Related Relief**

17 21. The Debtors are authorized to make non-substantive changes to the Bidding
18 Procedures, the Assumption and Assignment Procedures, and any related documents without
19 further order of the Court, including, without limitation, changes to correct typographical and
20 grammatical errors.

21 22. All persons and entities (whether or not selected as a Qualified Bidder) that submit
22 a bid for any of the Debtors' Assets during the sale process, including at the Auctions, shall be
23 deemed to have knowingly and voluntarily (i) submitted to the exclusive jurisdiction of this Court
24 with respect to all matters related to the terms and conditions of the transfer of Assets, the Auctions,
25 and any Sale; (ii) consented to the entry of a final order by the Court in connection with the Motion
26 or this Order (including any disputes relating to the Bidding and Auction Process, the Auctions,
27 and/or any Sale) to the extent that it is later determined that the Court, absent consent of the parties,
28

cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; and (iii) waived any right to jury trial in connection with any disputes relating to any of the foregoing matters.

23. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014, or any applicable provisions of the Bankruptcy Rules or the Local Rules or otherwise stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

24. Prior to mailing and publishing the Sale Notice and the Assumption and Assignment Notice, as applicable, the Debtors may fill in any missing dates and other information, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

25. To the extent the provisions of this Order are inconsistent with the provisions of any exhibits referenced herein or with the Motion, the provisions of this Order shall control.

26. The Debtors are authorized to take all actions reasonably necessary or appropriate to effectuate the relief granted in this Order.

27. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

IT IS SO ORDERED.

#

1 In accordance with LR 9021, counsel submitting this **ORDER (I) APPROVING**
 2 **AUCTION AND BIDDING, NOTICING, AND ASSUMPTION AND ASSIGNMENT**
 3 **PROCEDURES; (II) SCHEDULING CERTAIN DATES AND DEADLINES WITH**
 4 **RESPECT THERETO; (III) APPROVING FORM NOTICE TO BE PROVIDED TO**
 5 **INTERESTED PARTIES; AND (IV) GRANTING RELATED RELIEF** certifies that the
 6 order accurately reflects the court's ruling and that (check one):

- 7 The Court has waived the requirement set forth in LR 9021(b)(1).
- 8 No party appeared at the hearing or filed an objection to the motion.
- 9 I have delivered a copy of this proposed order to all counsel who appeared at the
 10 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or
 11 disapproved the order, or failed to respond, as indicated below [list each party and whether the party
 12 has approved, disapproved, or failed to respond to the document].
- 13 I certify that this is a case under Chapter 7 or 13, that I have served a copy of this
 14 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content
 15 of the order.

16 Prepared and submitted by:

17 McDONALD CARANO LLP

18 /s/ Ryan J. Works

19 Ryan J. Works (NSBN 9224)
 20 Amanda M. Perach (NSBN 12399)
 21 2300 West Sahara Avenue, Suite 1200
 22 Las Vegas, Nevada 89102
 23 rworks@mcdonaldcarano.com
 24 aperach@mcdonaldcarano.com

25 ALLEN OVERY SHEARMAN STERLING US LLP

26 Fredric Sosnick (New York Bar No. 2472488) (*admitted pro hac vice*)
 27 Sara Coelho (New York Bar No. 4530267) (*admitted pro hac vice*)
 28 599 Lexington Avenue
 29 New York, New York 10022
 30 fsosnick@aoshearman.com
 31 sara.coelho@aoshearman.com

32 *Proposed Counsel to the Debtors and Debtors in Possession*

1 **EXHIBIT A**

2 **Bidding Procedures**

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

2 In re:

- 3 NEVADA COPPER, INC.
- 4 NEVADA COPPER CORP.
- 5 NC DITCH COMPANY LLC
- NC FARMS LLC
- LION IRON CORP.
- 0607792 B.C. LTD.

Lead Case No.: 24-50566-hlb
Chapter 11

Jointly Administered with:
Case No. 24-50567-hlb
Case No. 24-50568-hlb
Case No. 24-50569-hlb
Case No. 24-50570-hlb
Case No. 24-50571-hlb

6 Debtors.¹

7

BIDDING PROCEDURES

8 On June 10, 2024, Nevada Copper, Inc., and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9 On [], 2024, the United States Bankruptcy Court for the District of Nevada (the “**Court**”) entered an order (ECF No. []) (the “**Bidding Procedures Order**”).² In the Bidding Procedures Order, the Court approved the following procedures (the “**Bidding Procedures**”) setting forth the process by which the Debtors are authorized to solicit bids for and conduct an auction (the “**Auction**”) for a sale or disposition of all or substantially all of the Debtors’ Assets (as defined herein) or any portion thereof, either as a going concern or as a liquidation (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”). On [June] , 2024, the Debtors filed a proposed form of asset purchase agreement (the “**Form APA**”) on the docket of the Chapter 11 Cases.

10 Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors’ chapter 11 cases are available upon request, by calling the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors’ restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

11

Description of the Assets to Be Auctioned

12 The Debtors are seeking to sell all of their assets as a going concern (or as a liquidation) pursuant to the terms of the Form APA. These assets include, but are not limited to, the Debtors’ going-concern business, real property, unexpired leases, executory contracts, equipment,

13

¹ The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

² Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Bidding Procedures Order or the Motion requesting the relief granted therein, as applicable.

1 inventory, supplies, intellectual property, insurance proceeds, prepaid expenses and deposits,
 2 ownership interests, and books and records (collectively, the “*Assets*”), in each case, free and clear
 3 of all liens, claims, interests, or other encumbrances, other than expressly assumed liabilities and
 4 obligations, to the fullest extent permitted by the Bankruptcy Code.

5 The ability to undertake and consummate any sale of the Assets shall be subject to
 6 competitive bidding as set forth herein and approval by the Court. The Debtors will consider bids
 7 that are made for all or substantially all of the Assets. In addition, the Debtors will consider bids
 8 for less than substantially all of the Assets, however, the value of such bids will be evaluated
 9 against the Debtors intention to sell all of their Assets, and the value and complexity of the sale of
 10 any Assets not included in a bid. The Debtors will also consider bids that take the form of a sale
 11 of stock of one or more subsidiaries.

12 Any party interested in submitting a bid for any of the Debtors’ Assets should contact the
 13 Debtors’ investment banker, Moelis & Company LLC (Attn: Douglas Pierson
 14 (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney
 15 (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

Important Dates and Deadlines

Date	Deadline
Monday, July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order	Service of Sale Notice; Publication of Sale Notice
Tuesday, July 30, 2024, or as soon as reasonably practicable thereafter	Serve notice of potential assumption and assignment (the “ <i>Assumption and Assignment Notice</i> ”) to contract counterparties
Tuesday, August 20, 2024 (or 21 days after service of an applicable notice of assumption and assignment)	Deadline to object to proposed cure amounts and assumption and assignment (the “ <i>Assumption and Cure Objection Deadline</i> ”)
Friday, September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)	Bid Deadline
Monday, September 9, 2024, at 9:00 a.m. (prevailing Pacific Time)	Qualified Bid Designation Date
Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
Thursday September 12, 2024	Serve Notice of Successful Bidder on Contract Counterparties
Friday, September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)	Deadline to object to the proposed Sale (“ <i>Sale Objection Deadline</i> ”); deadline to object to adequate assurance (“ <i>Adequate Assurance Objection Deadline</i> ”).

1 2 3 4 5 6 7 8	Tuesday, September 24, 2024, at 12:00 p.m. (prevailing Pacific Time)	Deadline for responses to objections.
	Wednesday, September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)³	Sale Hearing
	Thursday, September 26, 2024	Entry of Sale Order
	On or before Monday, October 8, 2024	Closing

9 Noticing

10 Consultation Parties

11 Subject to the terms of these Bidding Procedures, the Debtors shall consult in good faith
 12 with counsel to (each of the following parties, to the extent applicable, including such party's
 advisors, a "**Consultation Party**"):

- 13 i. any Official Committee of Unsecured Creditors appointed in these Chapter 11
 Cases (the "**Creditors' Committee**");
- 14 ii. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park,
 New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C.
 20006, Attn: Kate Doorley; and
- 15 iii. only to the extent that any Assets situated in Canada are proposed to be sold, the
 information officer ("**Information Officer**") appointed in the recognition
 proceedings in respect of the Debtors under the *Companies' Creditors Arrangement
 Act*.

19 Notwithstanding the foregoing, the consultation rights afforded herein shall not: (i) limit
 20 the Debtors' discretion in any way with respect to the evaluation of bids, compliance with these
 procedures, and other matters, including at the Auction; (ii) include the right to veto any decision
 21 made by the Debtors in the exercise of their reasonable business judgment; or (iii) otherwise limit
 the Debtors' reservation of rights in respect of their fiduciary obligations, including as described
 22 herein. Moreover, notwithstanding the foregoing, if a DIP Lender, or an affiliate of a DIP Lender,
 indicates that it is considering submitting, or actually submits, a Qualified Bid in respect of all or
 23 a portion of the Assets, such party shall have Consultation Rights only to the extent that such
 consultation reasonably can be performed without providing any confidential information
 regarding the sale of such Assets to the DIP Lenders. Nothing in these Bidding Procedures shall
 24 affect any rights or obligations under the DIP Facility.

25 If a member or an affiliate of a member of the Creditors' Committee submits a Qualified
 26 Bid in respect of all or a portion of the Assets, the Creditors' Committee will continue to have

27 ³ Subject to the availability and convenience of the Court.

1 Consultation Rights; *provided* that the Creditors' Committee shall exclude such member from any
 2 discussions or deliberations regarding the sale of such Assets and shall not provide any confidential
 3 information regarding the sale of such Assets to such member.

4 Bid Notice Parties

5 All Bids must be submitted in writing to the following parties (collectively, the "***Bid Notice***
 6 ***Parties***"):

- 7 i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington,
 8 NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
 9
- 10 ii. the Debtors' counsel, (a) Allen Overy Shearman Sterling US LLP,
 11 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick
 12 (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), Cody
 13 Wright (cody.wright@aoshearman.com); and (b) Torys LLP, 79 Wellington St. W.,
 14 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada (Attn:
 15 Tony DeMarinis (tdemarinis@torys.com) and Michael Amm
 16 (mamm@torys.com)); and
- 17 iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New
 18 York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul
 19 Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick
 20 Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

21 The Debtors shall provide copies of any Bids received to the Consultation Parties within
 22 one Business Day of receipt.

23 Sale Notice Parties

24 Information that must be provided to the "***Sale Notice Parties***" under these Bidding
 25 Procedures must be provided to the following parties:

- 26 i. the Consultation Parties (as applicable);
- 27 ii. all persons and entities, known by the Debtors and their advisors to have expressed
 28 an interest in a transaction with respect to any of the Debtors' Assets during the
 past 12 months (for whom identifying information and addresses are available to
 the Debtors);
- iii. all persons and entities known by the Debtors to have asserted any lien, claim,
 encumbrance, or other interest in any Asset (for whom identifying information and
 addresses are available to the Debtors), including all known holders of claims and
 all creditors prior to the date of entry of the Bidding Procedures Order;
- iv. all parties to litigation with the Debtors that are known as of the date of entry of the
 Bidding Procedures Order, or their counsel of record;
- v. all Counterparties to Assigned Contracts and Leases under the proposed Sale;
- vi. any Governmental Authority known to have a claim in these Chapter 11 Cases;
- vii. the United States Attorney for the District of Nevada;

- 1 viii. the Office of the Attorney General (or equivalent) in each state or province in which
the Debtors operate;
- 2 ix. the Office of the Secretary of State (or equivalent) in each state or province in which
the Debtors operate or are organized;
- 3 x. the Federal Trade Commission;
- 4 xi. the United States Attorney General/Antitrust Division of Department of Justice;
- 5 xii. the Information Officer c/o Alvarez & Marsal Canada Inc., Royal Bank Plaza,
South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, (Attn: Al
Hutchens (ahutchens@alvarezandmarsal.com));
- 6 xiii. Counsel to the Information Officer, Cassels Brock & Blackwell LLP, Suite 3200,
Bay Adelaide Centre – North Tower, 40 Temperance Street, Toronto, Ontario M5H
0B4 (Attn: Natalie E. Levine (nlevine@cassels.com));
- 7 xiv. all of the Debtors' known creditors (for whom identifying information and
addresses are available to the Debtors);
- 8 xv. the Master Service List maintained by the Debtors' Notice and Claims Agent; and
- 9 xvi. all other Persons directed by the Court (for whom identifying information and
addresses are available to the Debtors).

14 Public Announcement of Sale and Auction

15 By July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures
Order, the Debtors shall publish the Sale Notice, with any modifications necessary for ease of
publication, on one occasion in *The Wall Street Journal (National Edition)*, to provide notice to
any other potential interested parties, and post the Sale Notice on their case website,
<https://dm.epiq11.com/case/nevadacopper>.

16 Potential Bidder Requirements

17 To participate in the bidding process or otherwise be considered for any purpose hereunder,
including to receive access to due diligence materials, a person or entity interested in purchasing
the Assets or part of the Assets (a "**Potential Bidder**") must deliver or have previously delivered
to the Debtors the following preliminary documentation (collectively, the "**Preliminary Bid
Documents**"):

- 18 i. an executed confidentiality agreement (a "**Confidentiality Agreement**") in form
and substance acceptable to the Debtors;
- 19 ii. sufficient information that the Potential Bidder has or can reasonably obtain the
financial capacity to close a purchase of any portion, all, or substantially all of the
Debtors' Assets, the adequacy of which must be acceptable to the Debtors, in
consultation with the Consultation Parties;
- 20 iii. a statement indicating whether the Potential Bidder is requesting consent from the
Debtors to partner with or otherwise work with any other interested party in
connection with the potential submission of a joint Bid, the identity and domicile
of any such party or parties, and a concise description of the nature of such

1 partnership or joint Bid to the extent reasonably practicable, which the Debtors may
 2 approve in their reasonable business judgment, in consultation with the
 Consultation Parties, on a case-by-case basis; and

- 3 iv. any other information required (as determined by the Debtors in consultation with
 4 the Consultation Parties) to allow the Debtors, in consultation with the Consultation
 Parties, to determine that the Potential Bidder intends to receive due diligence
 information solely for purposes consistent with these Bidding Procedures.

5 The Debtors, in consultation with their advisors and the Consultation Parties, will
 6 determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate
 documents so that such Potential Bidder may proceed to conduct due diligence and submit a bid
 7 (such Potential Bidder, an "**Acceptable Bidder**"). The Debtors shall promptly inform the
 Consultation Parties of any entity that becomes an Acceptable Bidder. **For the avoidance of
 8 doubt, no Potential Bidder will be permitted to conduct any due diligence without entry into
 a Confidentiality Agreement.**

9 Promptly following the entry of these Bidding Procedures, the Debtors shall provide copies
 10 of all materials delivered by any Potential Bidder prior to the entry of these Bidding Procedures to
 the Consultation Parties and their counsel.

Qualified Bid Requirements

12 To participate in the Auction, an Acceptable Bidder must deliver to the Debtors and their
 13 advisors an irrevocable offer for the purchase of some or all of the Assets (each, a "**Bid**"), and shall
 meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- 14 i. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state the
 15 following: (a) the particular Assets, or the portion thereof identified with reasonable
 specificity, to be purchased and (b) the liabilities and obligations to be assumed,
 including any debt and cure costs to be assumed;
- 16 ii. **Good Faith Deposit:** Except with respect to any Credit Bid, the Bid must be
 17 accompanied by a cash deposit in the amount equal to 10% of the aggregate
 purchase price of the Bid to be held in an interest-bearing escrow account to be
 18 identified and established by the Debtors (the "**Good Faith Deposit**") on terms
 acceptable to the Debtors in consultation with the Consultation Parties. To the
 19 extent that a Bid is modified at or prior to the Auction, the applicable Acceptable
 Bidder must adjust its Good Faith Deposit so that it equals 10% of the increased
 20 aggregate purchase price promptly and in no event later than one business day
 following the conclusion of the Auction;
- 21 iii. **Purchase Price:** Each Bid must (a) clearly set forth the purchase price to be paid,
 22 assuming a purchase of the applicable Assets and any assumption of liabilities (the
 "Purchase Price"), (b) identify separately the cash and non-cash components of
 the Purchase Price, and (c) indicate the allocation of the Purchase Price among the
 23 applicable Assets; *provided* that, for the avoidance of doubt, such allocation shall
 not prejudice the rights of any party in interest to contest such allocation. The
 Purchase Price should be a single point value in U.S. Dollars for the applicable
 24 Assets on a cash-free, debt-free basis. Any Bid for substantially all of the Assets
 must also include a statement as to whether the Bid is conditioned on purchasing
 25 all Assets or whether the Qualified Bid should be viewed as a separate Bid for one
 or more sets of Assets. The Debtors will consider the value to the estate as a whole
 26 when evaluating bids for only certain of the Assets. The Debtors reserve the right,
 27

in consultation with the Consultation Parties, to ask any Acceptable Bidder to allocate the value ascribed to their Bid for any particular Asset and to inquire about any significant assumption on which such valuations are based;

- iv. **Same or Better Terms; Bid Documents:** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “**Bid Documents**”). The Bid Documents shall include: (a) the form of purchase agreement on which the Acceptable Bidder is prepared to transact, together with a redline of such agreement marked against the Form APA, (b) a schedule of contracts and leases to be assumed to the extent applicable to the Bid, (c) any other material documents integral to such Bid, and (d) a statement from the Acceptable Bidder that (1) it is prepared to enter into and consummate the transactions contemplated in the form purchase agreement, no later than ten days after the conclusion of the Auction, (or, if no Auction is held, the Bid Deadline (as defined below)), or if a later date is required, the reasons that such a later date is required; and (2) that the Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the “**Back-Up Bid**”)) until the consummation of the Sale Transaction;
 - v. **No Qualified Bidder Bid Protections:** Each Bid, other than a Bid that has been designated as a Stalking Horse Bid (as defined herein), must include a statement that the Bid does not entitle such bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the applicable Assets;
 - vi. **Employee Obligations:** Each Bid must indicate whether the Acceptable Bidder intends to hire all employees of the Debtor (or if applicable, all employees that are primarily employed in connection with the applicable Assets included in such Bid). If the Acceptable Bidder does not intend to hire all employees, the Acceptable Bidder must include a description of the Acceptable Bidder’s intentions with respect to any employee that is not to be hired under the terms of the Bid;
 - vii. **Sources of Financing:** To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Acceptable Bidder has received sufficient debt and equity funding commitments to satisfy the Acceptable Bidder’s obligations under the proposed Sale Transaction and other obligations under its Bid, including providing adequate assurance of future performance under all Contracts proposed to be assumed by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
 - viii. **Contingencies; No Financing or Diligence Outs:** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.

- ix. **Identity:** Each Bid must fully disclose the identity and domicile of each entity and each entity's shareholders, partners, investors, and ultimate controlling entities that will be bidding for or purchasing the applicable Assets or otherwise participating in connection with such Bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered to complete the transactions on the terms contemplated by the parties. Each Bid must also include contact information for the specific person(s) whom Moelis and A&O Shearman should contact regarding such Bid;
- x. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence prior to making its offer; (b) has relied solely upon its own independent review, investigation, and inspection of any documents and the assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the Acceptable Bidder's proposed purchase agreement;
- xi. **Authorization:** Each Bid must contain evidence that the Acceptable Bidder has obtained all necessary authorizations or approvals from its shareholders or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid;
- xii. **Joint Bids:** The Debtors will be authorized to approve joint Bids in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis, provided that a joint bid meets the Qualified Bid Requirements and the applicable bidders otherwise comply with these Bidding Procedures;
- xiii. **Adequate Assurance of Future Performance:** Each Bid must (a) identify any executory contracts (the "*Executory Contracts*") and any unexpired leases (the "*Unexpired Leases*") to be assumed or assumed and assigned in connection with the proposed Sale Transaction, (b) provide for the payment of all cure amounts (the "*Cure Amounts*") related to such Executory Contracts and Unexpired Leases by the Acceptable Bidder, (c) demonstrate, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties (as defined herein), that the Acceptable Bidder can provide adequate assurance of future performance under all such Executory Contracts and Unexpired Leases sufficient to satisfy the requirements of sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code, and (d) provide the following documentation: (1) the legal name of the proposed assignee of Unexpired Leases (the "*Proposed Assignee*") and any guarantors, as applicable; and (2) financial statements for the calendar years ended 2022 and 2023 for the Proposed Assignee and any guarantors, as applicable, and other financial information about the Proposed Assignee to demonstrate its ability to provide adequate assurance of future performance;
- xiv. **Acknowledgement of Compliance with Bidding Procedures, Bidding Order, Bankruptcy Code, and Non-Bankruptcy Law:** Each Bid must acknowledge its compliance in all respects with these Bidding Procedures, the Bidding Procedures Order, Bankruptcy Code and any applicable non-bankruptcy law;
- xv. **No Collusion:** The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction,

1 specifying that it did not agree with any Acceptable Bidders or Potential Bidders to
 2 control price; and (b) agree not to engage in any collusion with respect to any Bids,
 3 the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement
 4 does not restrict Potential Bidder(s) from working with other Potential Bidder(s)
 5 with the Debtors' prior written consent (email shall suffice) following the Debtors'
 6 consultation with the Consultation Parties;

- 7
- 8 xvi. **Good Faith Offer:** The Bid must constitute a good faith, *bona fide* offer to
 consummate the Sale Transaction;
- 9 xvii. **Irrevocable:** Each Bid must state that in the event such Bid is chosen as the Back-
 Up Bid (as defined below), it shall remain irrevocable until the Debtors and the
 Successful Bidder consummate the applicable Sale Transaction;
- 10 xviii. **Back-Up Bid:** Each Bid shall provide that the Acceptable Bidder will serve as a
 Back-Up Bidder (as defined below) if their Bid is the next highest or otherwise best
 bid;
- 11 xix. **Regulatory Approvals and Covenants:** A Bid must set forth each regulatory and
 third-party approval required for the Acceptable Bidder to consummate the Sale
 Transaction, if any, and the time period within which the Acceptable Bidder expects
 to receive such regulatory and third-party approvals (and in the case that receipt of
 any such regulatory or third-party approval would not be expected in time to allow
 the closing of the Sale Transaction to occur by October 8, 2024, those actions the
 Acceptable Bidder will take to ensure receipt of such approvals as promptly as
 possible);
- 12 xx. **Time Frame for Closing:** A Bid by an Acceptable Bidder must be reasonably
 likely (based on antitrust or other regulatory issues, experience, and other
 considerations) to be consummated, if selected as the Successful Bid (as defined
 herein), within a time frame for the Closing set forth above, or on such timeframe
 as may be acceptable to the Debtors, in consultation with the Consultation Parties;
 provided, that if the Acceptable Bidder expects to be unable to close on its Bid on
 or before October 7, 2024, its Bid should indicate the date on which it expects to
 be able to close;
- 13 xxi. **No Fees:** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs
 and expenses (including legal fees) in connection with the proposed transaction,
 and by submitting its Bid, the Acceptable Bidder is agreeing to disclaim any right
 to receive a fee analogous to a break-up fee, expense reimbursement, termination
 fee, or other similar form of compensation; and that, for the avoidance of doubt,
 each Acceptable Bidder by submitting its Bid is agreeing to refrain from and waive
 any assertion or request for reimbursement on any basis, including under section
 503(b) of the Bankruptcy Code; provided that the Debtors are authorized in their
 reasonable business judgment, in consultation with the Consultation Parties, to
 provide the Stalking Horse Bid Protections (as defined below) to one or more
 stalking horse bidders (each, a "***Stalking Horse Bidder***") in accordance with these
 Bidding Procedures;
- 14 xxii. **Adherence to Bidding Procedures:** By submitting its Bid, each Acceptable Bidder
 is agreeing to abide by and honor the terms of these Bidding Procedures and agrees
 not to submit a Bid or seek to reopen the Auction after conclusion of the Auction;

- 1 xxiii. **Consent to Jurisdiction:** The Acceptable Bidder must submit to the jurisdiction of
 2 the Court and waive any right to a jury trial in connection with any disputes relating
 3 to the Debtors' qualification of Bids, to the Auction, the Sale, the Sale Transaction
 4 and the construction and enforcement of these Bidding Procedures, any written
 5 indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents,
 6 and any and all other agreements entered into in connection with any proposed Sale
 7 Transaction, and the Closing, as applicable; and
 8
 9 xxiv. **Conditions to Closing:** Each Bid must identify with particularity each and every
 10 condition to closing, including the Executory Contracts and Unexpired Leases for
 11 which assumption and assignment is required.

7 Only Bids fulfilling all of the preceding requirements contained herein may be deemed to
 8 be Qualified Bids; *provided*, that a Bid not otherwise satisfying all of the preceding requirements
 9 may be designated a Qualified Bid, in the Debtors' reasonable business judgment, in consultation
 10 with the Consultation Parties. Only those parties submitting Qualified Bids may be deemed to be
 11 Qualified Bidders.

10 Neither the Debtors nor any of their advisors are making or have at any time made any
 11 warranties or representations of any kind or character, express or implied, with respect to the
 12 Assets, including, but not limited to, any warranties or representations as to operating history or
 13 projections, valuation, governmental approvals, the compliance of the Assets with governmental
 14 laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other
 15 information provided by or on behalf of the Debtors to a bidder, or any other matter or thing
 16 regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall
 17 sell and transfer to the Successful Bidder and the Successful Bidder shall accept the applicable
 18 Assets, except to the extent expressly provided in the Bankruptcy Court's order approving the Sale
 19 Transaction. Neither the Debtors nor any of their advisors will be liable for or bound by any
 20 express or implied warranties, guaranties, statements, representations, or information pertaining to
 21 the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to
 22 represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or
 23 in writing, unless (with respect to the Debtors only) specifically set forth in the Bankruptcy Court's
 24 order approving the Sale Transaction.

25 Within one business day after the Bid Deadline (the "***Qualified Bid Designation Date***"),
 26 the Debtors, in consultation with the Consultation Parties, shall determine which Acceptable
 27 Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted
 28 constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction.
 29 Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that
 30 if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a
 31 Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any
 32 deficiencies prior to the Auction.

Right to Credit Bid

The DIP Lenders, and any other Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates each (a "**Secured Creditor**") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim (a "**Credit Bid**") only with respect to the collateral by which such Secured Creditor is secured; *provided* that (i) any Credit Bid shall be conditioned on payment in full in cash of the DIP Facility, unless the DIP Lenders consent to a different treatment of such claims and (ii) the rights of any other Secured Creditor to challenge a Credit Bid that does not repay the secured claim of such Secured Creditor are fully preserved.

Obtaining Due Diligence Access

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors. Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request. The Debtors shall promptly consult with the Consultation Parties (a) with respect to any due diligence disputes that arise concerning any Acceptable Bidder and (b) prior to revoking due diligence access to any such entity. The Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room for the benefit of all Acceptable Bidders.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors and their advisors, after consultation with the Consultation Parties, shall be permitted to coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline, after consultation with the Consultation Parties, to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right, in consultation with the Consultation Parties, to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets (i) to any person or entity who is not an Acceptable Bidder and (ii) if and to the extent doing so would (a) violate any laws to which the Debtors are subject, including any privacy laws; (b) result in the disclosure of any trade secrets of third parties in breach of any contract with such third party; (c) violate any legally-binding obligation of any Debtor with respect to confidentiality, non-disclosure, or privacy; or (d) jeopardize protections afforded to any Debtor under the attorney-client privilege or the attorney

1 work product doctrine (provided, the Debtors shall use commercially reasonable efforts to (1)
 2 provide such access as can be provided (or otherwise convey such information regarding the
 applicable matter as can be conveyed) without violating such privilege, doctrine, contract,
 3 obligation, or law; and (2) provide such information in a manner without violating such privilege,
 doctrine, contract, obligation or law).

4 The Debtors shall provide the Consultation Parties periodic updates regarding the activity
 5 of each Acceptable Bidder in the electronic data room in a form and frequency mutually acceptable
 to the Debtors and the Consultation Parties; provided that the Debtors shall cooperate in good faith
 6 to provide any such information reasonably requested by the Consultation Parties.

Communications with Acceptable Bidders (including Qualified Bidders)

7 Notwithstanding anything to the contrary in these Bidding Procedures, all substantive
 8 direct communications, including any diligence requests, from Acceptable Bidders (including any
 Qualified Bidders) shall be through Moelis.

Due Diligence and Indications of Interest from Acceptable Bidders (including Qualified Bidders)

10 Each Acceptable Bidder (including, as applicable, any Qualified Bidder) shall:

- 11 i. Provide a preliminary indication of interest as requested by the Debtors or their
 12 advisors, together with any other information or materials requested in connection
 therewith (collectively, an "**Indication of Interest**"); and
- 13 ii. Comply with all reasonable requests for additional information and due diligence
 14 access requested by the Debtors or their advisors regarding the ability of such
 15 Acceptable Bidder (including any Qualified Bidder) to consummate its
 contemplated transaction.

16 Failure by an Acceptable Bidder (including, as applicable, any Qualified Bidder, other than
 17 the Stalking Horse Bidder, if any) to provide an acceptable Indication of Interest or comply with
 reasonable requests for additional information and due diligence access may be a basis for the
 18 Debtors to determine that such bidder is no longer an Acceptable Bidder or that a Bid made by
 such bidder is not a Qualified Bid.

Bid Deadline

19 An Acceptable Bidder that desires to make a bid on one or more of the Assets shall deliver
 20 Binding Bids to the Bid Notice Parties no later than **September 6, 2024, at 5:00 p.m. (prevailing
 Pacific Time)** (the "**Bid Deadline**"); provided that the Debtors may, in consultation with the
 21 Consultation Parties, extend the Bid Deadline for any reason whatsoever, in their reasonable
 22 business judgment, for all or certain Potential Bidders, without further order of the Court, subject
 to providing notice to all Potential Bidders and the Consultation Parties.

Evaluation of Qualified Bids

23 The Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the
 24 Debtors' business judgment, and in consultation with the Consultation Parties, the highest or
 otherwise best Qualified Bid or combination of Qualified Bids for any Assets (the "**Starting Bid**").
 25 The Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the
 26 Debtors, including the Starting Bid, but in no event later than the next business day following
 receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any
 27

related information as confidential and shall not publicly disclose such information without the prior written consent of the Debtors and the applicable bidder.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration; (ii) the Qualified Bidder's ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; (v) the treatment of employee liabilities; and (vi) the liabilities and obligations to be assumed pursuant to such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

Stalking Horse Protections

At any time until 20 days prior to the Bid Deadline, the Debtors shall be authorized, but not obligated, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction for such assets, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder and subject in all respects to approval of the Court, (x) provide a break-up fee and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses the (“***Stalking Horse Bid Protections***”) in an aggregate amount of break-up fee and reimbursement of expenses not to exceed three percent of the Purchase Price; *provided, however,* that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted, a Bid for any Assets, it shall not have consent rights with respect to the selection of the Stalking Horse Bidder or any protections to be afforded to such Stalking Horse Bidder.

In the event that the Debtors enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court (the “***Stalking Horse Notice***”) and serve the Stalking Horse Notice on the Stalking Horse Bidder and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bidder’s bid (the “***Stalking Horse Bid***”) and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid; (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within five business days of filing with the Court, (the “Notice Period”), the Debtors may submit an order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period or as soon thereafter as the Court is available.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have

wedged their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

No Qualified Bids

If no Qualified Bids other than the Bid submitted by the Stalking Horse Bidder (the “***Stalking Horse Bid***”), if any, are received for the Assets included in the Stalking Horse Bid by the Bid Deadline, then the Debtors may cancel the Auction with respect to such Assets. If any Stalking Horse Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate the Stalking Horse Bid as the Successful Bid (as defined below) as to the applicable Assets and pursue entry of an order approving a Sale Transaction with respect to such Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement. The Debtors promptly shall file notice of any cancellation of the Auction with the Court.

Auction

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for the Assets (or, if applicable, any portion of Assets) by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment, in consultation with the Consultation Parties, with respect to such Assets or portion of Assets. If the Debtors do not receive a Qualified Bid for any particular Asset by the Bid Deadline, the Debtors will not conduct the Auction with respect to such Asset. If one or more Qualified Bids (other than the Stalking Horse Bid, if any) are received by the Bid Deadline with respect to the applicable Assets, then the Debtors shall conduct the Auction with respect to such Assets in accordance with the Auction Procedures (as defined below) and shall consult with the Consultation Parties throughout the Auction process (to the extent such Consultation Parties have not submitted a Qualified Bid).

The Auction shall commence on **September 10, 2024 at 12:00 p.m. (prevailing Eastern Time)** at the New York offices of A&O Shearman or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the “*Auction Procedures*”):

- i. the Auction will be conducted openly; *provided* that, except as otherwise determined by the Debtors in consultation with the Consultation Parties, only (a) the Debtors, (b) the Consultation Parties, (c) representatives of the Office of the United States Trustee, (d) any statutory committee appointed in these Chapter 11 Cases, (e) any other Qualified Bidders, and (f) the respective representatives and professionals of the foregoing parties shall be entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction;
 - ii. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
 - iii. the Qualified Bidders, including any Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
 - iv. bidding shall begin with the Starting Bid;
 - v. subsequent bids (each, an “*Overbid*”) may only be made at the Auction and shall be at least (a) a 2% increase in cash, cash equivalents, or other such consideration

1 that the Debtors, in their reasonable business judgment, in consultation with the
 2 Consultation Parties, deem equivalent over the previous bid *plus* (b) in the event
 3 that the Debtors have entered into a Stalking Horse Agreement with respect to the
 4 Assets to which the Overbid relates, the aggregate amount of Bid Protections
 5 (including, for the avoidance of doubt, any break-up fees and expense
 6 reimbursements) under such Stalking Horse Agreement (a “**Minimum Overbid**”),
 7 and each successive Overbid shall exceed the then-existing Overbid by an
 8 incremental amount that is not less than the Minimum Overbid. The Debtors may,
 9 in their reasonable business judgment, in consultation with the Consultation Parties,
 10 announce increases or reductions to the Minimum Overbid at any time during the
 11 Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder
 12 may submit at the Auction must contain a Purchase Price in cash, cash equivalents,
 13 or such other consideration that the Debtors, in their reasonable business judgment,
 14 in consultation with the Consultation Parties, deem equivalent that exceeds the then
 15 existing highest Bid by at least the amount of the Minimum Overbid

- 16 vi. at the commencement of the Auction, the Debtors, in consultation with the
 17 Consultation Parties, may announce procedural and related rules governing the
 18 Auction, including time periods available to all Qualified Bidders to submit
 19 successive bid(s);
- 20 vii. each Qualified Bidder will be permitted a reasonable time to respond to previous
 21 bids at the Auction, as determined by the Debtors in consultation with the
 22 Consultation Parties;
- 23 viii. during the course of the Auction, the Debtors shall, after submission of each
 24 Overbid and consultation with the Consultation Parties (to the extent such
 25 Consultation Parties have not submitted a Qualified Bid), promptly inform each
 26 Qualified Bidder of the terms of the previous bids and inform each Qualified Bidder
 27 which Overbid(s) reflect, in the Debtors’ view, in consultation with the
 28 Consultation Parties, the highest or otherwise best bid(s) for the applicable Assets
 (the “**Prevailing Highest Bid**”);
- ix. to remain eligible to participate in the Auction, in each round of bidding, each
 Qualified Bidder, except the Qualified Bidder(s) that submitted the Prevailing
 Highest Bid, must submit an Overbid with respect to such round of bidding. To the
 extent a Qualified Bidder that did not submit the Prevailing Highest Bid fails to
 submit an overbid with respect to such round of bidding, such Qualified Bidder
 shall be disqualified from continuing to participate in the Auction; *provided*, the
 Debtors, in their reasonable business judgment and in consultation with the
 Consultation Parties (to the extent such Consultation Parties have not submitted a
 Qualified Bid), may permit a bidder that has been disqualified to take part in the
 Auction solely to the extent a Qualified Bidder that has not been disqualified has
 agreed (after receiving express permission from the Debtors upon consultation with
 the Consultation Parties) to permit such disqualified bidder to join such Qualified
 Bidder in its next-round Bid as an additional purchaser party or debt or equity
 financing source;
- x. the Auction will be transcribed to ensure an accurate recording of the bidding at the
 Auction;
- xi. each Qualified Bidder will be required to confirm on the record that it has not
 engaged, and will not engage, in any collusion with respect to the bidding or any
 Sale Transaction. For the avoidance of doubt, this requirement does not restrict

1 Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors' prior written consent;

- 2 xii. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona*
 3 *fide* offer and it intends to consummate the Sale Transaction if selected as the
 4 Successful Bid in accordance with these Bidding Procedures (as may be modified
 5 in accordance herewith at the Auction);
- 6 xiii. the Court and the Debtors will not consider bids made after the Auction has been
 7 closed;
- 8 xiv. the Debtors, in their reasonable business judgment, in consultation with the
 9 Consultation Parties, may reject, at any time before entry of an order of the Court
 10 approving a Successful Bid, any Bid that the Debtors determine is (a) inadequate
 11 or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code,
 12 the Bidding Procedures, or the terms and conditions of the Sale Transaction, or
 13 (c) contrary to the best interests of the Debtors, their estates, their creditors, and
 14 other stakeholders;
- 15 xv. the Debtors have the right to request any additional information that will allow the
 16 Debtors to make a reasonable determination as to a Qualified Bidder's financial
 17 and other capabilities to consummate the transactions contemplated by their
 18 proposal and any further information that the Debtors believe is reasonably
 19 necessary to clarify and evaluate any Bid made by a Qualified Bidder during the
 20 Auction;
- 21 xvi. the Debtors reserve the right, in their reasonable business judgment, and in
 22 consultation with the Consultation Parties, to adjourn the Auction one or more times
 23 to, among other things, (a) facilitate discussions between the Debtors and Qualified
 24 Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and
 25 (c) provide Qualified Bidders the opportunity to provide the Debtors with such
 26 additional evidence as the Debtors, in their reasonable business judgment, and in
 27 consultation with the Consultation Parties, may require in order to determine that
 28 the Qualified Bidder has sufficient internal resources or has received sufficient non-
 1 contingent debt and equity funding commitments to consummate the proposed
 2 transaction at the prevailing amount; and
- 3 xvii. notwithstanding anything herein to the contrary, the Debtors may, in consultation
 4 with the Consultation Parties, at any time choose to adjourn the Auction by
 5 announcement at the Auction; *provided*, that in the event of an adjournment of the
 6 Auction, the Debtors promptly shall file notice thereof with the Court.

7 Any Auction rules adopted by the Debtors will not modify any of the terms of the Stalking
 8 Horse purchase agreement or the rights of the Stalking Horse Bidder, if any, without the consent
 9 of the Stalking Horse Bidder, if any.

10 Acceptance of the Successful Bidder

11 The Auction shall continue until (i) there is only one Qualified Bid or a combination of
 12 Qualified Bids that the Debtors determine, in their reasonable business judgment and in a manner
 13 consistent with the exercise of their fiduciary duties and outlined below in further detail, and in
 14 consultation with the Consultation Parties, is the highest or otherwise best bid to purchase the
 15 applicable Assets (each, a "**Successful Bid**"), and (ii) the Debtors determine, in their reasonable
 16 business judgment, in consultation with the Consultation Parties, that further bidding is unlikely

to result in a different Successful Bid or Successful Bids that would be reasonably acceptable to the Debtors, at which point, the Auction will be closed.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors, in consultation with the Consultation Parties, may consider the following factors in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration, which includes but is not limited to, assumed liabilities (administrative liabilities, cure payments), and the amount of executory contracts and leased locations being assumed; (ii) the Qualified Bidder's ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; (v) the treatment of employee liabilities; and (vi) any other consideration that may impact the Debtors' estates or stakeholders.

Any Qualified Bidder that submits a Successful Bid will be deemed a “Successful Bidder” with respect to the Assets contemplated for the purchase pursuant to such Successful Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the Auction at a hearing (the “***Sale Hearing***”) at which the Debtors shall seek Court approval to enter into a binding purchase agreement with the Successful Bidder on the terms of the Successful Bid (the order approving such entry, the “***Definitive Purchase Agreement Order***”). For the avoidance of doubt, the Definitive Purchase Agreement Order shall deem the Debtors’ selection of the Successful Bid final; *provided* that, notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any Debtor to take or refrain from taking any action that it determined in good faith, in consultation with counsel, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Within one business day of the selection of the Successful Bidder, such Successful Bidder (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable) shall make a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the basis of the increased aggregate purchase price, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the Debtors pursuant to a customary and reasonable escrow agreement. Each Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

Designation of Back-Up Bidder

The Back-Up Bid to purchase any applicable Assets (the “*Back-Up Bidder*”) will be determined by the Debtors at the conclusion of the Auction, in consultation with the Consultation Parties, and will be announced at that time to all the Qualified Bidders participating in the Auction. Following consultation with the Consultation Parties, the Debtors’ selection of a Back-Up Bid shall be deemed final, and the Debtors shall not accept any further bids or offers to submit a bid after such selection. The Debtors will be authorized, but not required, to consummate the Transaction with the Backup Bidder without further order of the Bankruptcy Court, so long as such Backup Bid shall have been approved in connection with the Bankruptcy Court’s approval of the Successful Bid, or subject to Bankruptcy Court approval if not.

If for any reason a Successful Bidder fails to consummate the purchase of such assets within the time permitted, then the Back-Up Bidder will automatically be deemed to have submitted the Successful Bid for such assets, and the Back-Up Bidder shall be deemed a Successful

1 Bidder for such assets and shall be required to consummate any Sale Transaction with the Debtors
 2 as soon as is reasonably practicable without further order of the Court, following a notice being
 3 filed with the Court; provided, however, that the Debtors shall first provide notice to Contract
 4 counterparties implicated by any Back-Up Bidder's Bid and an opportunity to object to the
 assignment to the Back-Up Bidder within 5 days of receiving such notice. To the extent any
 objections are raised and remain unresolved, the Court may schedule a hearing on an expedited
 basis to adjudicate such objection.

5 The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) 45 days
 6 after completion of the Auction, (ii) consummation of a Sale Transaction with one or more
 7 Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by the Debtors in
 writing (the "Back-Up Termination Date"). The Debtors shall return the Back-Up Bidder's deposit
 owed within five business days of the Back-Up Termination Date.

Approval of the Sale Transaction

9 A hearing to consider approval of each Sale Transaction (the "Sale Hearing"), currently is
 10 scheduled to take place on **September 25, 2024, at 10:00 a.m.** (prevailing Pacific Time), before
 11 the Honorable Hilary L. Barnes at the United States Bankruptcy Court for the District of Nevada,
 C. Clifton Young Federal Building, 300 Booth Street, Reno, NV 89509 (Courtroom 2) and
 telephonically.

12 At the Sale Hearing certain findings will be sought from the Court regarding the Auction,
 13 including, among other things, that: (1) the Auction was conducted, and the Successful Bidder was
 14 selected, in accordance with the Bidding Procedures; (2) the Auction was fair in substance and
 15 procedure; (3) the Successful Bid was a Qualified Bid as defined in the Bidding Procedures; and
 16 (4) consummation of any Sale Transaction as contemplated by the Successful Bid in the Auction
 17 will provide the highest or otherwise best offer for the applicable Assets and is in the best interests
 of the Debtors and their estates. **The Sale Hearing may be continued to a later date by the
 Debtors, in consultation with the Consultation Parties, by sending notice to creditors or other
 parties in interest prior to, or making an announcement at, the Sale Hearing. No further
 notice of any such continuance will be required to be provided to any party (including the
 Stalking Horse Bidder, if any).**

18 Objections to the Sale Transaction(s), and entry of any order approving the sale (the "*Sale
 Order*") must (i) be in writing and specify the nature of such objection; (ii) comply with the
 19 Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Court; and (iii) be filed
 20 with the Court and served so as to be **actually received** by the Debtors, the Consultation Parties,
 the Bid Notice Parties, and the foregoing parties' respective counsel by September 19, 2024, at
 21 12:00 p.m. (prevailing Pacific Time).⁴

Return of Good Faith Deposit

22 The Good Faith Deposit of the Successful Bidder or Successful Bidders, if any, will, upon
 23 consummation of the Successful Bid or Successful Bids, become property of the Debtors' estates
 24 and be credited to the portion of such Successful Bidder's or Successful Bidders' applicable
 Purchase Price.

25
 26 ⁴ In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business
 27 judgment to pursue a Sale Transaction pursuant to a Plan, a separate deadline to object to such Sale Transaction
 shall be set by order of the Court.
 28

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid (or Back-Up Bid, if applicable), then the Good Faith Deposit of such Successful Bidder (or Back-Up Bidder, if applicable) irrevocably will be forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders will be returned within five business days after consummation of the applicable Sale Transaction.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders' Plan or purchase agreement, as applicable. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Court.

Commissions

Other than with respect to (i) any Stalking Horse Bid Protections that become payable pursuant to the terms of a Stalking Horse Agreement and (ii) any payment obligations with respect to the Debtors' investment banker, Moelis & Company, (a) the Debtors shall be under no obligation to pay any commissions, fees, or expenses to any bidder's agent, advisor or broker; (b) all commissions, fees, or expenses for any such agents, advisors, or brokers shall be paid by the applicable bidder at such bidder's discretion; and (c) in no case shall any commissions, fees, or expenses for any bidder's agent, advisor, or broker be deducted from any proceeds derived from any sale of the Assets.

Reservation of Rights

The Debtors, in consultation with the Consultation Parties, reserve their rights to modify these Bidding Procedures in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties in any manner that will best promote the goals of the bidding process, or impose, at or before the Auction, additional customary terms and conditions on the sale of the applicable Assets, including, without limitation: (1) extending the deadlines set forth in the Bidding Procedures; (2) adjourning the Auction without further notice; (3) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (4) canceling the Auction; (5) rejecting any or all Bids or Qualified Bids; and (6) adjusting the applicable minimum overbid increment; *provided, however,* that the Debtors may not amend these Bidding Procedures, the Bidding Procedures Order or the bidding process to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court. All such modifications and additional rules will be communicated in advance to each of the Consultation Parties and the U.S. Trustee, Acceptable Bidders and Qualified Bidders; *provided, further,* that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction. If any of the DIP Lenders, the Office of the U.S. Trustee or any official committee of unsecured creditors appointed in these cases determines in good faith that any modification to these Bidding Procedures or the Bidding Procedures Order, or any adoption of new rules, procedures or deadlines, would not be consistent with this paragraph or these Bidding Procedures or the Bidding Procedures Order, such DIP Lender, U.S. Trustee, or Committee may file an objection with the Bankruptcy Court, and no such modification or adoption shall become effective until such objection is resolved. The Debtors shall provide advance notice in writing of any such modification to the Consultation Parties and the U.S. Trustee and any Qualified Bidder, including any Stalking Horse Bidder.

1 All parties expressly reserve all of their rights (and do not waive any such rights) to seek
2 Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any
3 related items (including, if necessary, to seek an extension of the Bid Deadline).

4 Each reference in these Bidding Procedures and the Bidding Procedures Order to
5 "consultation" (or similar phrase) with the Consultation Parties shall mean consultation in good
6 faith. All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an
7 expedited basis if they disagree with any actions or decisions made by the Debtors as part of these
8 Bidding Procedures. The rights of all Consultation Parties with respect to the outcome of the
9 Auction are reserved.

10

11 **Consent to Jurisdiction**

12 All Qualified Bidders at the Auction will be deemed to have consented to the core
13 jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating
14 to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these
15 Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the
16 Bid Documents, and any and all other agreements entered into in connection with any proposed
17 Sale Transaction, as applicable, and consented to the entry of a final order or judgment in any way
18 related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the
19 construction and enforcement of any agreement or any other document relating to the Sale any
20 Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter such
21 a final order or judgment absent the consent of the parties.

22 Any parties raising a dispute relating to these Bidding Procedures must request that such
23 dispute be heard by the Court on an expedited basis.

24

25 **Fiduciary Matters**

26 Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these
27 Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of
28 directors, board of managers, or similar governing body of a Debtor to take any action or to refrain
from taking any action related to any sale transaction or with respect to these Bidding Procedures,
to the extent such Debtor, board of director, board of managers, or such similar governing body
reasonably determines in good faith, in consultation with counsel, that taking or failing to take
such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations
under applicable law.

1 **EXHIBIT B**

2 **Form of Sale Notice**

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

2 In re:

- NEVADA COPPER, INC.
- NEVADA COPPER CORP.
- NC DITCH COMPANY LLC
- NC FARMS LLC
- LION IRON CORP.
- 0607792 B.C. LTD.

7 Debtors.¹1 Lead Case No.: 24-50566-hlb
2 Chapter 113 Jointly Administered with:
4 Case No. 24-50567-hlb
5 Case No. 24-50568-hlb
6 Case No. 24-50569-hlb
7 Case No. 24-50570-hlb
8 Case No. 24-50571-hlb9 Hearing Date:
10 Hearing Time:

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND
SALE HEARING FOR THE SALE OF SUBSTANTIALLY ALL ASSETS

10 PLEASE TAKE NOTICE that on [], 2023, the United States Bankruptcy Court for the
 11 District of Nevada (the “Court”) entered the [*Order (I)(A) Approving the Auction and Bidding*
Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an
Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA,
and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts
and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C)
Authorizing the Sale of Assets and (D) Granting Related Relief [Docket No. []]] (the “**Bidding**
 12 **Procedures Order**”)² in the chapter 11 cases of the above-captioned debtors and debtors in
 13 possession (collectively, the “**Debtors**”).

14 PLEASE TAKE FURTHER NOTICE that, if the Debtors receive qualified competing
 15 bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will
 16 conduct an auction (the “**Auction**”) of the Assets **on September 10, 2024, at 12:00 p.m.**
 17 (**prevailing Eastern Time**) at the New York offices of Allen Overy Shearman Sterling US LLP,
 18 599 Lexington Avenue, New York, NY 10022, or such other location announced to the bidders
 and Consultation Parties.

19 PLEASE TAKE FURTHER NOTICE that only the Debtors, the Consultation Parties,
 20 Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine to include
 21 in their reasonable discretion, in consultation with the Consultation Parties, in each case, along
 with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified
 22 Bidders will be entitled to make Overbids at the Auction. **All interested or potentially affected**
 23 **parties should carefully read the Bidding Procedures and the Bidding Procedures Order.**

24 PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale
 25 Transaction at a hearing scheduled to commence on or before **September 25, 2024, at 10:00 a.m.**
 26 (**prevailing Pacific Time**) (the “**Sale Hearing**”) before the Honorable Judge Barnes, at the United

27 ¹ The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in
 28 which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

2 ² Capitalized terms used but not defined in this notice have the meanings given to them in the Bidding Procedures Order.

1 States Bankruptcy Court for the District of Nevada, 300 Booth Street, 5th Floor, Courtroom 2,
 2 Reno, Nevada 89509, and telephonically.

3 **PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding
 4 Procedures Order, objections to consummation or approval of the Sale and each Sale Transaction
 5 must (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the
 6 Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific
 7 grounds therefor; and (d) be filed with the Court and served so as to be *actually received on or*
 8 *before September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)* by the following parties:
 9

- 10 i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington,
 NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- 11 ii. the Debtors' counsel, Allen Overy Shearman Sterling US LLP,
 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick
 (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), Cody
 Wright (cody.wright@aoshearman.com));
- 12 iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New
 York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul
 Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick
 Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- 13 iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009,
 Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- 14 v. proposed counsel to any Official Committee of Unsecured Creditors appointed in
 these Chapter 11 Cases, [●], and [●], and (b) [●], [ADDRESS], Attn: [●];
- 15 vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park,
 New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C.
 20006, Attn: Kate Doorley; and
- 16 vii. counsel to any Stalking Horse Bidder, [●], and [●], and (b) [●], [ADDRESS], Attn:
 [●].

17 **PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion,
 18 Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents
 19 filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors'
 20 claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free
 21 at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors'
 22 restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION

23 **ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO
 24 THE SALE OR A SALE TRANSACTION, AS APPLICABLE, ON OR BEFORE THE
 25 SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING
 26 PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY
 27 OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF
 28 THE APPLICABLE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
 ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS MAY BE SET FORTH IN
 THE APPLICABLE PURCHASE AGREEMENT OR THE PLAN, AS APPLICABLE.**

1 Dated this ____th day of _____ 2024.

2
3 McDONALD CARANO LLP

4 /s/ Ryan J. Work
5 Ryan J. Works (NSBN 9224)
6 Amanda M. Perach (NSBN 12399)
7 2300 West Sahara Avenue, Suite 1200
8 Las Vegas, Nevada 89102

9 ALLEN OVERY SHEARMAN STERLING US LLP
10 Fredric Sosnick (NYSBN 2472488) (*admitted pro hac vice*)
11 Sara Coelho (NYSBN 4530267) (*admitted pro hac vice*)
12 599 Lexington Avenue
13 New York, New York 10022

14 *Proposed Counsel to the Debtors and Debtors in Possession*

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **EXHIBIT C**

2 **Form of Assumption and Assignment Notice**

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

- NEVADA COPPER, INC.
 - NEVADA COPPER CORP.
 - NC DITCH COMPANY LLC
 - NC FARMS LLC
 - LION IRON CORP.
 - 0607792 B.C. LTD.

Debtors.¹

Lead Case No.: 24-50566-hlb
Chapter 11

Jointly Administered with:
Case No. 24-50567-hlb
Case No. 24-50568-hlb
Case No. 24-50569-hlb
Case No. 24-50570-hlb
Case No. 24-50571-hlb

Hearing Date:

Hearing Time:

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU
OR ONE OF YOUR AFFILIATES ARE A COUNTERPARTY TO AN
EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE
OF THE DEBTORS AS SET FORTH ON EXHIBIT A ATTACHED HERETO.

PLEASE TAKE NOTICE that on [], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [*Order (I) Approving the Auction and Bidding Procedures, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. []]] (the “Bidding Procedures Order”) in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).²

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contract or agreement listed on **Exhibit A** to which you are a counterparty, upon approval of the Sale Transaction. The Debtors have conducted a review of their books and records and have determined that the Cure Payments for unpaid monetary obligations under such Executory Contract or Unexpired Lease is as set forth on **Exhibit A**. You are receiving this Assumption and Assignment Notice because you may be a counterparty to a Contract or Lease (a “Counterparty”) that is proposed to be assumed and assigned to the Successful Bidder in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Payments, object to a proposed assignment to the Successful Bidder of any Executory Contract or Unexpired Lease, or dispute the ability of the Successful Bidder to provide adequate assurance of future performance with respect to any Contract, your objection must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order

¹ The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion or the Bidding Procedures.

governing the administration of these chapter 11 cases; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payments, state the correct Cure Payments alleged to be owed to the objecting contract counterparty, together with any applicable and appropriate documentation in support thereof; and (iv) be filed with the Court and served and **actually received no later than [Tuesday, August 20, 2024, at 12:00 p.m. (prevailing Pacific Time)]** (the "**Assumption and Cure Objection Deadline**") by the Court and the following parties:

- viii. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ix. the Debtors' counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), Cody Wright (cody.wright@aoshearman.com));
- x. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- xi. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- xii. proposed counsel to any Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, [●], and [●], and (b) [●], [ADDRESS], Attn: [●];
- xiii. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- xiv. counsel to any Stalking Horse Bidder, [●], and [●], and (b) [●], [ADDRESS], Attn: [●].

PLEASE TAKE FURTHER NOTICE that if no objection to (a) the Cure Payments, (b) the proposed assignment and assumption of any Executory Contract or Unexpired Lease, or (c) adequate assurance of the Successful Bidder's ability to perform is filed by the Cure Objection Deadline, then (i) you will be deemed to have stipulated that the Cure Payments as determined by the Debtors are correct, (ii) you will be forever barred, estopped, and enjoined from asserting any additional Cure Payments are due under the Executory Contract or Unexpired Lease, and (iii) you will be forever barred, estopped, and enjoined from objecting to such proposed assignment to the Successful Bidder on the grounds that the Successful Bidder has not provided adequate assurance of future performance as of the closing date of the Sale Transaction.

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment of an Executory Contract or Unexpired Lease or related Cure Payments in connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, shall be heard at a later date as may be fixed by the Court.

PLEASE THAT FURTHER NOTICE that, notwithstanding anything herein, **the mere listing of any Executory Contract or Unexpired Lease on the Contract Assumption Notice or any Supplemental Assumption Notice does not require or guarantee that such Executory Contract or Unexpired Lease will be assumed by the Debtors at any time or assumed and**

1 **assigned, and all rights of the Debtors and the Successful Bidder with respect to such**
2 **Executory Contracts and/or Unexpired Leases are reserved.** Moreover, the Debtors explicitly
3 reserve the right, in their reasonable discretion, to seek to reject or assume each Executory Contract
4 or Unexpired Lease pursuant to section 365(a) of the Bankruptcy Code and in accordance with the
5 procedures allowing the Debtors and/or the Successful Bidder, as applicable, to designate any
6 Executory Contract or Unexpired Lease as either rejected or assumed on a post-closing basis.
7

4 **PLEASE TAKE FURTHER NOTICE** that, nothing herein (i) alters in any way the
5 prepetition nature of the Executory Contracts or Unexpired Leases or the validity, priority, or
6 amount of any claims of a counterparty to any Contract against the Debtors that may arise under
7 such Executory Contract or Unexpired Lease, (ii) creates a postpetition contract or agreement, or
8 (iii) elevates to administrative expense priority any claims of a counterparty to any Executory
9 Contract or Unexpired Lease against the Debtors that may arise under such Executory Contract or
10 Unexpired Lease.
11

8 **PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion,
9 Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents
10 filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors'
11 claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free
12 at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors'
13 restructuring website at <https://dm.epiq11.com/case/nevadacopper>.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated this ____th day of _____ 2024.

2
3 McDONALD CARANO LLP

4 /s/ Ryan J. Work
5 Ryan J. Works (NSBN 9224)
6 Amanda M. Perach (NSBN 12399)
7 2300 West Sahara Avenue, Suite 1200
8 Las Vegas, Nevada 89102

9 ALLEN OVERY SHEARMAN STERLING US LLP
10 Fredric Sosnick (NYSBN 2472488) (*admitted pro hac vice*)
11 Sara Coelho (NYSBN 4530267) (*admitted pro hac vice*)
12 599 Lexington Avenue
13 New York, New York 10022

14 *Proposed Counsel to the Debtors and Debtors in Possession*

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **EXHIBIT D**

2 **Form APA**

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28